

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:	:
	:
	: MB Docket No. 14-82
PATRICK SULLIVAN	:
(Assignor)	: FRN 0003749041, 0006119796,
	: 0006149843, 0017196064
and	:
	: Facility ID No. 146162
LAKE BROADCASTING, INC.	:
(Assignee)	: File No. BALFT-20120523ABY
	:
Application for Consent to	:
Assignment of License of FM:	:
Translator Station W238CE,	:
Montgomery, Alabama	:
	:

Volume 5

Wednesday,
May 3, 2017

Federal Communications Commission
445 12th Street, S.W.
Hearing Room TWA363
Washington, D.C. 20554

The above-entitled matter came on for hearing, pursuant to notice, at 10:30 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL,
Chief Administrative Law Judge

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P-R-O-C-E-E-D-I-N-G-S

(10:29 a.m.)

JUDGE SIPPEL: This is a hearing, the formal hearing in the case of Patrick Sullivan and Lake Broadcasting, Inc. Application for Consent to Assignment. It's MB Docket number 14-82. I'm going to ask the Enforcement Bureau to enter their appearance on the record, please.

MR. OSHINSKY: Your Honor, entering our appearance, Gary Oshinsky for the Enforcement Bureau.

JUDGE SIPPEL: Okay, Mr. Oshinsky.

MR. KNOWLES-KELLETT: And William Knowles-Kellett for the Enforcement Bureau.

JUDGE SIPPEL: And for Mr. Rice?

MR. JACOBS: My name is Jerold L. Jacobs, and I represent Patrick Sullivan, the proposed assignor of FM Translator Station W238CE, and Lake Broadcasting, Inc., the proposed assignee.

JUDGE SIPPEL: Which is owned and controlled by Mr. Rice, is that correct?

MR. JACOBS: Mr. Rice is the President, sole owner, and Director of Lake.

JUDGE SIPPEL: All right, thank you. Okay, I have a schedule that came to my attention. Today's May 3rd. We have Mr. Michael Rice as the first witness, is that correct?

MR. JACOBS: Yes, sir.

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1 JUDGE SIPPEL: Okay. And then we're going to have
2 Dr. Ann Duncan, and then tomorrow we're going to have Ms.
3 Tamara Gremminger and Dr. Weitzl. So there's only four
4 witnesses, is that correct?

5 MR. JACOBS: That's correct.

6 JUDGE SIPPEL: Is that right?

7 MR. KNOWLES-KELLETT: On Friday, Dr. Weitzl. She's
8 going to fly in tomorrow afternoon.

9 JUDGE SIPPEL: No, that's why, I thought I said
10 that. But we have four witnesses.

11 MR. KNOWLES-KELLETT: Exactly.

12 JUDGE SIPPEL: Okay. We should be able to handle
13 that. As I said before. I want to take a lunch break. If
14 it's 10:30 now, I want to take a lunch break at 12:30, come
15 back here at 1:30, and see how we go in the afternoon. And
16 everybody has agreed to that. So let's get started.

17 Mr. Jacobs, do you want to call your first witness?

18 MR. JACOBS: I have an opening statement first,
19 Your Honor.

20 JUDGE SIPPEL: How long is it?

21 MR. JACOBS: Two minutes.

22 JUDGE SIPPEL: Okay. We can do two minutes. Go
23 ahead, sir. No, I'm not trying to make light of it. I mean,
24 this is -- I'm very time conscious.

25 MR. JACOBS: Okay.

1 JUDGE SIPPEL: But go ahead, right ahead.

2 MR. JACOBS: At this hearing, Lake intends to prove
3 that Mr. Rice's felony convictions have no continuing effect
4 on his qualifications or the qualifications of Lake to be a
5 licensee because Mr. Rice is fully rehabilitated from his past
6 criminal activity, has a very low risk of re-offending, and
7 is fully fit to become a Commission licensee again.

8 Lake has not operated any broadcast station since
9 October 2001, but has remained in good standing as a Missouri
10 corporation to date. While Mr. Rice is the physical
11 embodiment of Lake, Lake was previously disqualified
12 independently of Mr. Rice, and Mr. Rice was not held
13 accountable for Lake's misrepresentation and lack of candor
14 misconduct.

15 JUDGE SIPPEL: As to the Commission?

16 MR. JACOBS: Right. Lake is now fully fit to
17 become a Commission licensee again. The subject assignment
18 application should be granted. To prove these points, Lake
19 presents three direct case exhibits and two witnesses.

20 Exhibit number 1 is a biographical statement of Mr.
21 Rice, who will testify at the hearing. His exhibit covers his
22 early history through the present time. It shows that he is
23 fully rehabilitated, is involved in civic and religious
24 activities, does occasional broadcast engineering work, is in
25 moderately good health but suffers from diabetes and

1 hypertension, and has obtained seven letters of reference from
2 long time acquaintances and business associates who all
3 express awareness of his prior history, describe his current
4 neighborhood or business relationship, and variously state
5 their beliefs that Mr. Rice is honest, is respected in his
6 community, is a changed man, has achieved extraordinary
7 rehabilitation and good standing in his St. Charles area, and
8 fully complies with all FCC and FAA regulations.

9 Lake's Exhibit 2 is a statement about the status
10 of Lake Broadcasting, Inc., a Missouri for-profit corporation
11 which has not operated a broadcast station since 2001 but
12 remains in good standing as a Missouri corporation.

13 As its president, sole director, and 100 percent
14 owner, Mr. Rice will testify at the hearing that he and Lake
15 can both be relied upon to be truthful, candid, and
16 forthcoming in the dealings with the Commission, and will
17 comply in all other respects with the Commission's rules,
18 regulations, and policies.

19 Exhibit 3, the statement and psychological reports
20 prepared by Dr. Ann Duncan-Hively, a PhD clinical psychologist
21 with a JD law degree, practicing psychology in Chesterfield,
22 Missouri.

23 She examined Mr. Rice at length in 1991 and again
24 in 2014 and concludes that Mr. Rice has been successfully
25 rehabilitated, and his probability of re-offending is very

1 low. She will testify at the hearing that she finds no
2 psychological basis for barring Mr. Rice from gaining a
3 broadcast license again. He represents the epitome of the
4 term rehabilitation.

5 It is vitally important, Your Honor, to put this
6 case into proper historical context. Mr. Rice's criminal
7 misconduct occurred between 1985 and 1990. He was arrested
8 in 1990. His trial occurred in 1994, and he began an eight-
9 year prison term in September 1994.

10 Mr. Rice obtained early release from prison on
11 December 29, 1999 after serving just over five years of his
12 sentence. On October 3, 2001, Mr. Rice shut down his five
13 broadcast stations, pursuant to Commission order. In August
14 2002, Mr. Rice completed parole and was fully restored to all
15 rights of citizenship including the right to vote.

16 Mr. Rice is now almost 76 years old. Over the last
17 three years, he has spent tens of thousands of dollars in the
18 current effort to become re-licensed. This is a matter of
19 principle for him, redeeming his good name. That is the point
20 of winning this case, not obtaining ownership of a mere \$1,000
21 FM translator station.

22 As the hearing designation order states, the
23 crucial question in this case is whether Mr. Rice has been
24 rehabilitated. Lake submits that this issue should be judged
25 by examining Mr. Rice today and seeing what he has been doing

1 for the last 17 years, since his release from prison.

2 The evidence shows that he has never re-offended
3 and is a productive member of society. These are the things
4 that count. The Bureau wastes its time and hours by harping
5 on things that happened --

6 JUDGE SIPPEL: No, no. No, no, you're not going
7 to say that. No wasting time.

8 MR. KNOWLES-KELLETT: It's crossed into argument.
9 It's no longer a statement.

10 JUDGE SIPPEL: Yes, I just want to let this go a
11 little bit longer.

12 MR. JACOBS: I have one more sentence.

13 JUDGE SIPPEL: Go right ahead.

14 MR. JACOBS: Harping on things that happened 25 or
15 more years ago. The future is now, and Mr. Rice and Lake are
16 fully rehabilitated and have earned the right to be re-
17 licensed. I thank you, Your Honor.

18 JUDGE SIPPEL: Does the Bureau have anything in
19 terms of an opening statement or some facsimile thereof?

20 MR. KNOWLES-KELLETT: Well, Your Honor, we
21 submitted a trial brief --

22 JUDGE SIPPEL: I know.

23 MR. KNOWLES-KELLETT: -- which sets out our case
24 quite concretely.

25 JUDGE SIPPEL: Fair enough.

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1 MR. KNOWLES-KELLETT: As far as any opening
2 statement, I think we can reserve until we're ready to put on
3 our case.

4 JUDGE SIPPEL: Fair enough. Mr. Jacobs, I just
5 want to ask you one fact question. When is the last time that
6 Mr. Rice performed an unlawful act in connection with his
7 background? In other words, what was the last one that's --
8 as a matter of record. He was arrested --

9 MR. JACOBS: In November, 1990.

10 JUDGE SIPPEL: Okay. Was that the terminate?

11 MR. JACOBS: Yes.

12 JUDGE SIPPEL: All of his activities?

13 MR. JACOBS: Yes.

14 JUDGE SIPPEL: Completely?

15 MR. JACOBS: Yes.

16 JUDGE SIPPEL: Okay. All right. So it's 1990 to
17 today?

18 MR. JACOBS: Yes.

19 JUDGE SIPPEL: Thank you. You may proceed, Mr.
20 Jacobs.

21 MR. JACOBS: Well, we now would like to call as our
22 witness Mr. Michael S. Rice. Come forward and be sworn. And
23 his direct case exhibit is Exhibit number 1 in our exhibit --

24 JUDGE SIPPEL: Come forward, Mr. Rice.

25 (Whereupon, the above-referred to document was

1 marked as Rice Exhibit No. 1 for identification.)

2 JUDGE SIPPEL: Is that his testimony, sworn?

3 MR. JACOBS: That's his testimony.

4 JUDGE SIPPEL: Okay, we'll get him, we'll talk to
5 him about it.

6 WHEREUPON,

7 MICHAEL RICE

8 was called as a witness by Counsel for the Plaintiff and,
9 having been first duly sworn, assumed the witness stand, was
10 examined and testified as follows:

11 MR. KNOWLES-KELLETT: Your Honor, as a preliminary
12 matter, did you want to deal with what exhibits are and aren't
13 into evidence?

14 JUDGE SIPPEL: Not yet. Let's get this testimony
15 first.

16 MR. OSHINSKY: Your Honor, we would also like to
17 ask for a rule on witnesses?

18 JUDGE SIPPEL: I'm sorry?

19 MR. OSHINSKY: That the witnesses be excluded from
20 Mr. Rice's testimony. Sequestered, I'm sorry.

21 JUDGE SIPPEL: Well, he's got the testimony in
22 written form. Why would anybody have to be sequestered?

23 MR. OSHINSKY: All right. Is it Your Honor's
24 intention for Mr. Rice and the other witnesses to be limited
25 just to the written, direct testimony?

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1 JUDGE SIPPEL: Well, if for some reason they vary
2 from it, I'm going to have to hear from counsel, and I'm going
3 to hear from you.

4 MR. OSHINSKY: Okay, thank you.

5 JUDGE SIPPEL: I'm not expecting it to happen, but
6 you know how things go. I mean, on cross examination, he may
7 be led into another area.

8 MR. OSHINSKY: Yes, I was talking about just
9 direct.

10 JUDGE SIPPEL: Just direct? I'm going to assume
11 that he's going to be kept pretty close to what is written
12 out. Now this is the, I've got a set of the exhibits of, I
13 guess you're the applicant, I guess.

14 MR. JACOBS: Right.

15 JUDGE SIPPEL: So you're the plaintiff, you have
16 the burden of proof?

17 MR. JACOBS: Yes.

18 JUDGE SIPPEL: Okay. Is there any objection to any
19 of these exhibits?

20 MR. OSHINSKY: Well, Your Honor, we do have
21 objections which were filed in the Bureau's objections to
22 direct evidence of Lake.

23 JUDGE SIPPEL: Okay, could you just repeat those
24 quickly?

25 MR. KNOWLES-KELLETT: Okay, our primary objections,

1 Your Honor, the character reference letters were not prepared
2 under penalty of perjury.

3 JUDGE SIPPEL: I read that one, okay.

4 MR. KNOWLES-KELLETT: Okay, and they were submitted
5 under a declaration that's signed by Mr. Rice, not by their
6 authors.

7 JUDGE SIPPEL: I hear you. Okay.

8 MR. KNOWLES-KELLETT: And in there is also a letter
9 without a declaration under penalty of perjury from Mr. Rice's
10 deceased psychiatrist. And we objected that that's straight
11 hearsay, he can't be, it's not a dying declaration. So we
12 think --

13 JUDGE SIPPEL: Well he certainly can't be cross
14 examined.

15 MR. KNOWLES-KELLETT: Exactly. So we think that
16 the conclusions in that letter can't be relied on.

17 JUDGE SIPPEL: All right, I'll grant the last
18 request for the dead man's letter. The others, I think you
19 definitely have a point, but all these things are are letters
20 saying he's a fine, decent man. That's all they're saying.
21 I don't think there's anything controlling.

22 MR. KNOWLES-KELLETT: Just one minute, Your Honor.

23 JUDGE SIPPEL: Yes, I hear it.

24 MR. OSHINSKY: Your Honor, the Bureau feels that
25 these letters actually supply a necessary element in the case,

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1 and so we think it is --

2 JUDGE SIPPEL: What is the element? What is that?

3 MR. OSHINSKY: Standing in the community. And that
4 is part of the test for rehabilitation. So these letters do
5 have a concrete effect. And so we --

6 JUDGE SIPPEL: How long have you known about these
7 letters?

8 MR. OSHINSKY: The letters have been with us for
9 quite a while, but they've also been unsworn.

10 JUDGE SIPPEL: Did you ever talk to any of these
11 witnesses on the phone even?

12 MR. OSHINSKY: No, Your Honor. We did do a Lexis
13 search, in fact.

14 JUDGE SIPPEL: Yes, but did you talk to the people
15 who wrote the letters?

16 MR. OSHINSKY: No, but I'm not sure that would have
17 made any difference, Your Honor.

18 JUDGE SIPPEL: Well, I'm not sure either, but maybe
19 it would have. I'm 50/50 on that one. I'm going to let the
20 rest of them in. I'm not going to give a lot of weight to
21 them, but if you say that it does go to an element of the
22 case, or an issue of the case, I'm going to receive it as
23 being relevant to that, and I said they're nice endorsements
24 which don't mean too much.

25 It means a lot to you, sir. But I mean, for

1 purposes of the legality of this case, it doesn't mean too
2 much.

3 MR. OSHINSKY: Your Honor, I would just like to
4 note that they are purely hearsay.

5 JUDGE SIPPEL: They are hearsay.

6 MR. OSHINSKY: Yes.

7 JUDGE SIPPEL: Do you think that hearsay is
8 admissible in an administrative case?

9 MR. OSHINSKY: Not in this case, Your Honor. We
10 don't believe that these letters fit into any exception.

11 JUDGE SIPPEL: Well, they say that -- we don't have
12 fast rules of evidence with respect to administrative
13 hearings. I try and be as close to them as I can, and I'm not
14 particularly happy with my ruling. Counsel should have gotten
15 about the declarations, all that should have been done.

16 I'm going to give you a chance to do it after the
17 fact, get each of these people to submit a declaration with
18 respect to whatever it is they wrote. You hear me?

19 MR. JACOBS: It's done.

20 JUDGE SIPPEL: It is done now?

21 MR. JACOBS: Yes.

22 JUDGE SIPPEL: Do I have them?

23 MR. JACOBS: Yes.

24 JUDGE SIPPEL: They're in here, they're in your
25 book?

1 MR. JACOBS: No because they were just filed on
2 April 30th, and the Bureau has filed a motion to strike.

3 JUDGE SIPPEL: Well, I am certainly going to
4 address the motion to strike. Did you file an opposition to
5 it?

6 MR. JACOBS: No, just an informal note saying that
7 --

8 JUDGE SIPPEL: It was too technical and you didn't
9 want to take the time to do it. All right, well I'm going to
10 have to think about that then. But I'm still going to leave
11 it here for purposes of discussion.

12 MR. KNOWLES-KELLETT: Okay, Your Honor, we don't
13 think the declarations cured the hearsay problem with these
14 letters. There just isn't enough in these letters to make
15 them reliable.

16 JUDGE SIPPEL: There is no way of curing the
17 hearsay aspect of these letters without the witnesses being
18 here in court.

19 MR. KNOWLES-KELLETT: Okay.

20 JUDGE SIPPEL: Nobody's brought them in. You
21 haven't taken their depositions. You've had these letters a
22 while. There's an element of waiver here, too. I mean, you
23 know, well anyway. I'm going to take a look again at the
24 written points in the motion, and I'll address those. But
25 right now I'm treating this as, I'm going to treat those

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1 letters as exhibits, subject to my final ruling.

2 MR. OSHINSKY: Thank you, Your Honor.

3 JUDGE SIPPEL: Okay. They're conditionally in, in
4 other words. Any other objections?

5 MR. OSHINSKY: No, other than what Knowles-Kellett
6 mentioned, no.

7 JUDGE SIPPEL: Okay. Then subject to my ruling
8 with respect to the character letters, his exhibits, Mr. Rice
9 exhibits, Lake Broadcasting Exhibits, what are they numbered,
10 A, B, C, D?

11 MR. JACOBS: Those are the appendices, yes.

12 JUDGE SIPPEL: Well, what am I going to call these?
13 I have to have a number for these things, A through B or
14 something?

15 MR. JACOBS: I did one.

16 JUDGE SIPPEL: Oh, I see, okay. Exhibit 1 with
17 Appendix what, A?

18 MR. JACOBS: A, B, C, and D.

19 (Whereupon, the above-referred to document was
20 marked as Direct Case Exhibit No. 1 for identification.)

21 JUDGE SIPPEL: D, okay. That's right. And then
22 we've got Exhibit 2 with Appendix A, is that correct?

23 MR. JACOBS: A and B.

24 JUDGE SIPPEL: And B, right, right.

25 (Whereupon, the above-referred to document was

1 marked as Direct Case Exhibit No. 2 for identification.)

2 JUDGE SIPPEL: And then we have Exhibit 3 with
3 Appendix A, B, C, and then we have a certificate of service.

4 (Whereupon, the above-referred to document was
5 marked as Direct Case Exhibit No. 3 for identification.)

6 MR. JACOBS: Right.

7 JUDGE SIPPEL: All right. Well, all the exhibits
8 that have been identified are identified for the record, and
9 they're received into evidence subject to the ruling, final
10 ruling on the documents we've talked about.

11 Okay. All right, we'll get to the Bureau's
12 exhibits at the appropriate time. But I'm going to ask you,
13 Mr. Jacobs, to look at these exhibits again and as I say, I've
14 given you something, give me something, if you can. If you
15 can live with it. Do you hear me?

16 MR. JACOBS: Well I, we supplied declarations.

17 JUDGE SIPPEL: I know, I know. I'm not arguing
18 with you. Look, what I'm saying is I've been very liberal in
19 treating your imperfect exhibits. And I want you to look
20 again at the Bureau exhibits, and maybe some of the objections
21 you've had, you can reconsider. That's all I'm asking.

22 MR. JACOBS: Okay, well when we look at those --

23 JUDGE SIPPEL: That's all I'm asking, don't worry
24 about it. Yes is good enough.

25 MR. JACOBS: -- I'll be happy to --

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1 JUDGE SIPPEL: Yes is fine with me. Okay, let's
2 begin with this witness. Your witness.

3 MR. JACOBS: We move the admission of Direct Case
4 Exhibit number one which is Mr. Rice's biographical statement.

5 JUDGE SIPPEL: Any objection?

6 MR. OSHINSKY: No, Your Honor.

7 JUDGE SIPPEL: Okay, it's in.

8 (Whereupon, the above-referred to document was
9 received into evidence as Direct Case Exhibit No. 1.)

10 JUDGE SIPPEL: Let me see. Oh, there it is. Page
11 2, rehabilitation, 1999 to the present. I'm asking these
12 questions on voir dire, and then I'm going to turn him over
13 to you to testify. You understand that?

14 MR. JACOBS: It was my understanding that as soon
15 as the exhibit was admitted, Mr. Rice would be open to cross
16 and I wouldn't have to, I mean, he's not going to read his
17 exhibit aloud.

18 JUDGE SIPPEL: Okay. Well I would like to set a
19 few questions. I didn't expect to hear him, I wasn't even
20 hinting that that was going to be the case. But anyway, let
21 me ask you this question.

22 You say on Page 2 on your rehabilitation, upon
23 release from prison in 1999, et cetera, Mr. Rice moved from
24 his previous home in St. Louis County to St. Charles County
25 where he bought a home in a residential subdivision. Now what

1 was the purpose of that move?

2 THE WITNESS: We had leased the house in St. Louis
3 County and we gave up the lease, and then I moved to, when I
4 was released to prison to St. Charles County, to that house.
5 That was the reason.

6 JUDGE SIPPEL: Well, was that, was the St. Charles
7 County house, was that your permanent home?

8 THE WITNESS: Yes. Well, no, not then. But it is
9 now.

10 JUDGE SIPPEL: Well, I'm still asking the question
11 again. Why move, it was a lease. Was the lease expiring?

12 THE WITNESS: It had expired.

13 JUDGE SIPPEL: On this, okay, on the St. Louis
14 property.

15 THE WITNESS: Correct.

16 JUDGE SIPPEL: So you moved because the lease was
17 up?

18 THE WITNESS: No, I was actually still
19 incarcerated, and I moved into the home of my present home in
20 1999.

21 JUDGE SIPPEL: That's what it says here.

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: Okay. But you did not own the home
24 at that time, in 1999?

25 THE WITNESS: No.

1 JUDGE SIPPEL: Okay. Did you buy it now, it's your
2 home?

3 THE WITNESS: I inherited it.

4 JUDGE SIPPEL: Oh, that's good. Well, that's one
5 step better than buying. Okay, now I want to ask you did you
6 register as a sex offender in the area of your new home?

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: Okay. And you are still registered
9 that way?

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: Okay. Now the only reason I'm
12 asking that question is because I want to see what your
13 appreciation is of your legal obligations. So I'm not trying
14 to make any other issue than that of it. Okay, let me just
15 look at this. I'm pretty much finished.

16 Oh, here's one yet. On Page 1 and 2, immediately
17 in April 1991 began voluntary hospitalization of six months
18 for psychiatric evaluation at the Barnes Hospital in St.
19 Louis. Who paid for that psychiatric evaluation?

20 THE WITNESS: Insurance and myself.

21 JUDGE SIPPEL: Okay. That's fine. And the same
22 paragraph, as of the time of his incarceration, all of Mr.
23 Rice's conditions were in remission as a result of his
24 treatment. What do you mean by in remission? Doesn't that
25 apply to cancer?

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1 THE WITNESS: Well, I'm not a doctor. I'm not sure
2 how to --

3 JUDGE SIPPEL: I'm not either, yes. So I don't
4 know what you meant by in remission.

5 THE WITNESS: I guess remission means that you
6 don't have the mental problems that I had previously is what
7 I believe that would mean.

8 JUDGE SIPPEL: That's what you intended it to mean?

9 THE WITNESS: In this, yes.

10 JUDGE SIPPEL: There's no trick question, that's
11 okay. Let me see. And again, your successful completion of
12 a 12 month Missouri sexual offender program, again, how was
13 that paid for?

14 THE WITNESS: The State of Missouri.

15 JUDGE SIPPEL: They paid for that?

16 THE WITNESS: The state, and it's done while you're
17 incarcerated, and it's a condition, you have to complete it
18 in order to get parole.

19 JUDGE SIPPEL: Well, those are the taxpayers of
20 Missouri that are paying for that.

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Not a bad deal. Okay. All right,
23 I don't have any other questions. Wait just a minute. Let's
24 see. Here, I'm on Page 4, I got ahead of myself here. Mr.
25 Rice is fully recovered and rehabilitated from his psychiatric

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1 condition. That's from Dr. Stillings. It's a psychiatric
2 condition, psychiatric condition?

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: The bipolar end of it?

5 THE WITNESS: Yes, I think there were several other
6 diagnoses he had. But --

7 JUDGE SIPPEL: Okay. Well I'm going to get into,
8 we'll get into that. But and you also have diabetes?

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: You know, Wellbutrin does not
11 naturally go very well with diabetes.

12 THE WITNESS: No, I take other medicine for that.

13 JUDGE SIPPEL: But not for the diabetes. Yes,
14 that's the trouble. You take one medicine, another medicine
15 to cure what is bad about that medicine. I understand that.
16 Let me see. It is his opinion to a reasonable degree of
17 medical psychiatric certainty, and that's Dr. Stillings, that
18 Mr. Rice is qualified for FCC licensure. Now what the heck
19 does the doctor know about FCC licensure?

20 THE WITNESS: Beats me, I don't know.

21 JUDGE SIPPEL: All right, well that's two of us
22 that are beaten. I mean, I'm not going to give any credence
23 to that sentence. Mr. Rice's primary care physician is now
24 Dr. Kramer, an internist in an, okay, that's irrelevant.

25 Okay, he's fully recovered and rehabilitated from

1 his psychiatric condition. Does that mean your condition that
2 at one time it moved you to assault children?

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: Is that a fair question?

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: I mean, you already served time for
7 that so you don't need a 5th Amendment. I hope not. And
8 again, we find no psychological reason that Mr. Rice should
9 not merit the reconsideration of his license status. Well,
10 that is totally, he's totally unqualified to make that
11 statement. Is that a she or a he? That's Dr. Anne L. Duncan-
12 Hively.

13 So same goes for her as goes for the other doctor,
14 they can't qualify, they can't characterize your success in
15 treatment and tie that in with your capable of operating under
16 a license. Okay, that's all I have.

17 Oh, one more question. I'm sorry, one more. Were
18 any letters of reference, any character letters sought from
19 any of those people that you had abused?

20 THE WITNESS: No.

21 JUDGE SIPPEL: Is there a reason for that?

22 THE WITNESS: I don't know where they're at. It
23 was so long ago that I have not had any contact.

24 JUDGE SIPPEL: Did you ever apologize to them or --

25 THE WITNESS: I did in open court at the time of

1 the sentence.

2 JUDGE SIPPEL: But I mean, did you ever personally
3 contact them say by letter or by telephone, telegraph?

4 THE WITNESS: No.

5 JUDGE SIPPEL: Email?

6 THE WITNESS: No because --

7 JUDGE SIPPEL: You were prevented from doing that
8 by the Court. You had a court order --

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: -- don't do that.

11 THE WITNESS: You cannot contact the victims or
12 witnesses.

13 JUDGE SIPPEL: That makes sense, okay. I take that
14 question back. That's all I have.

15 MR. OSHINSKY: We have a few, Your Honor.

16 JUDGE SIPPEL: Oh, I know you do. I hope you do.

17 CROSS EXAMINATION

18 MR. OSHINSKY: Good morning, Mr. Rice.

19 THE WITNESS: Good morning, Mr. Oshinsky.

20 BY MR. OSHINSKY:

21 Q Can I ask you, are you the one who wrote your
22 direct testimony that the Counsel's Exhibit has put into
23 evidence?

24 A No.

25 Q Who wrote it?

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1 A Mr. Jacobs.

2 Q Mr. Rice, you're here today to ask the Judge and
3 the Commission to grant your application for a new FM
4 translator station, is that correct?

5 A Yes.

6 Q And as a part of that request you're asking the
7 Judge and the Commission find that you're rehabilitated from
8 the crimes of deviant sexual assault and sodomy that you
9 committed against five children back in 1991, correct?

10 A Yes.

11 Q You're also asking the Commission and the Judge to
12 find that you're rehabilitated from your misrepresentation and
13 your lack of candor to the Commission concerning your running
14 of contemporary media in your other broadcasting companies
15 back in 2001 I believe?

16 A I made no misrepresentations.

17 Q So you're not here to ask for rehabilitation from
18 that?

19 A I don't know how to answer that.

20 MR. OSHINSKY: Yes or no.

21 JUDGE SIPPEL: Why can't you answer that question?

22 THE WITNESS: Would you repeat the question so --

23 JUDGE SIPPEL: That's the best way to get out of
24 it.

25 MR. OSHINSKY: You're also here to ask the

1 Commission and the Judge to find that you're rehabilitated
2 from your misrepresentation and lack of candor to the
3 Commission concerning the running of Contemporary Media in
4 your other broadcasting companies as you were convicted?

5 JUDGE SIPPEL: Well, I'm going to stop you right
6 there because there's no such thing as being rehabilitated
7 from making a false statement. You can't be rehabilitated.
8 It's done, it's done. Just don't do it again.

9 MR. OSHINSKY: I agree, Your Honor.

10 JUDGE SIPPEL: Okay. Other than that it's a proper
11 question.

12 MR. OSHINSKY: Now in your testimony, your direct
13 written testimony, you admit that you were convicted of sexual
14 offenses, correct?

15 THE WITNESS: Yes.

16 MR. OSHINSKY: Your Honor, I have one of the
17 documents that Mr. Jacobs submitted to us in discovery. And
18 I guess it would be best if we had it marked. Is there
19 somebody here to mark it?

20 JUDGE SIPPEL: I'll mark it myself. What is your
21 next, what is your last exhibit. In the big book, what is
22 your last exhibit?

23 MR. KNOWLES-KELLETT: Direct Case Exhibit 9, Your
24 Honor.

25 JUDGE SIPPEL: It's 9? So this will be 10.

1 (Whereupon, the above-referred to document was
2 marked as Direct Case Exhibit No. 10 for identification.)

3 MR. OSHINSKY: Yes, remember the --

4 JUDGE SIPPEL: Did the reporter understand that?

5 MR. OSHINSKY: I'm going to hand you this.

6 JUDGE SIPPEL: No, no. Don't just hand it to him.
7 Give it to me, give it to me. I have a document before me
8 that's, how many pages is this? None of these pages are
9 numbered.

10 MR. OSHINSKY: No, this is the original that we
11 received.

12 JUDGE SIPPEL: It's a -- it's called Second Amended
13 Information. State of St. Louis, et cetera, against Michael
14 Rice.

15 MR. OSHINSKY: Right, this is the charging
16 document.

17 JUDGE SIPPEL: A charging document. Okay, that
18 charging document, and what is the date on it?

19 MR. OSHINSKY: This is, I think 1991.

20 JUDGE SIPPEL: Let's not think. Oh, here it is.
21 July 5, 1994.

22 MR. OSHINSKY: Four, sorry. I'm going to give a
23 copy to Mr. Jacobs but I'm afraid I'm going to trip over this
24 line.

25 JUDGE SIPPEL: Okay, we're going to call it Exhibit

1 10, as your Exhibit 10, the Bureau Exhibit 10. It's
2 identified and received into evidence.

3 (Whereupon, the above-referred to document was
4 received into evidence as Direct Case Exhibit No. 10.)

5 MR. OSHINSKY: Yes, I'm actually going to have
6 trouble getting it to Mr. Rice.

7 JUDGE SIPPEL: That's okay. Reporter, write your
8 comments. Go ahead. Could you get that -- no, go ahead.
9 Give it to him.

10 MR. OSHINSKY: Well, I have to step over --

11 JUDGE SIPPEL: Oh, I'm sorry. You're going to hand
12 it to me.

13 MR. OSHINSKY: Well, that's what I started to do.

14 JUDGE SIPPEL: I'm sorry. You got all that down?

15 PARTICIPANT: Yes, sir.

16 JUDGE SIPPEL: Okay, I just don't want anything --

17 (Simultaneous speaking.)

18 JUDGE SIPPEL: Yes, I will be glad to assist you,
19 unless your objective doesn't object.

20 MR. OSHINSKY: Well, it's a document that he
21 supplied to us.

22 JUDGE SIPPEL: Well, he might not like me
23 participating that much in the trial. Go ahead, go ahead.
24 Are you familiar with this document, sir?

25 THE WITNESS: Yes.

1 JUDGE SIPPEL: Take your time, take your time and
2 re-familiarize yourself. Don't take too much time, but I
3 mean, don't be rushed into things. Did you give my attorney
4 advisor a copy?

5 MR. OSHINSKY: I did not, sir.

6 JUDGE SIPPEL: Okay, you almost ready, Mr. Rice?

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: You said yes?

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: Okay. Go ahead.

11 MR. OSHINSKY: Mr. Rice, isn't it true that you
12 were convicted of six counts of sexual assault for having
13 deviant sexual intercourse with children who were between the
14 age of 14 and 16?

15 JUDGE SIPPEL: Well, you know, I'm going to object
16 to that because there's no reason to go into that kind of
17 detail. The document speaks for itself. You could say isn't
18 it true that you were convicted of child abuse or something
19 like that, generic. But I don't want to unnecessarily get
20 into any detailed identifying, particularly when the
21 document's in the record.

22 MR. OSHINSKY: I understand that, Your Honor. But
23 we feel it's important because under the holding in Titus.
24 The type of crime involved is significant to the question of
25 rehabilitation. And here where it is a particularly heinous

1 crime, we think that that has a bearing on what Your Honor has
2 to determine in terms of whether Mr. Rice is actually
3 rehabilitated.

4 JUDGE SIPPEL: Well, okay. I'm going to talk to
5 Mr. Jacobs. Can you stipulate to that?

6 MR. JACOBS: No.

7 JUDGE SIPPEL: It's not a heinous crime, you're
8 thinking it's not a heinous crime. Is it heinous or heinous,
9 how do you pronounce that?

10 MR. JACOBS: The point is --

11 MR. OSHINSKY: Heinous.

12 JUDGE SIPPEL: Heinous, heinous crime.

13 MR. JACOBS: -- the hearing designation order made
14 it clear that this hearing was not to re-litigate any findings
15 or conclusions in the state court proceedings or FCC
16 proceedings.

17 JUDGE SIPPEL: All right, let me stop you there.
18 He is not re-litigating. He's not re-litigating. He's simply
19 describing more than I want to hear, what a document says.
20 And the document speaks for itself. That's all I'm talking
21 about.

22 MR. JACOBS: The document has some language in it
23 which lay people or even attorneys might misunderstand because
24 it uses the word sodomy.

25 JUDGE SIPPEL: All right, now what is your point

1 that you want that language repeated here? Is that the idea?

2 MR. JACOBS: I would just like to make it clear
3 that under Missouri law, sodomy includes the mere touching of
4 another person. It does not require any sort of intercourse.

5 JUDGE SIPPEL: You mean touching in a particular
6 area, not just touching somebody on the arm.

7 MR. JACOBS: Right.

8 JUDGE SIPPEL: Good. I'll tell you what, this is
9 getting confusing. Do it your way. Do it your way.

10 MR. OSHINSKY: Okay, thank you, Your Honor. You
11 have a question pending, Mr. Rice. The question was isn't it
12 true that you were convicted of six counts of sexual assault
13 for having deviant sexual intercourse with children who were
14 between 14 and 16 years of age? Weren't you convicted of
15 that?

16 THE WITNESS: I don't think I was convicted of
17 intercourse.

18 MR. OSHINSKY: All right, I'll take that. But you
19 were convicted of a sexual offense, I think it's also referred
20 to as sexual battery in the first degree?

21 THE WITNESS: Battery?

22 MR. OSHINSKY: You don't know what you were
23 convicted of?

24 THE WITNESS: That's what it says here.

25 JUDGE SIPPEL: Well, do you have any reason to

1 disagree with this document? You've read it, you have it --

2 THE WITNESS: No, I believe it's factual.

3 JUDGE SIPPEL: Accurate?

4 THE WITNESS: Accurate.

5 JUDGE SIPPEL: This is factual. We don't want
6 alternative facts. This is factually accurate?

7 THE WITNESS: Yes, because it was a court document.

8 It was --

9 JUDGE SIPPEL: Well, no, no, no. Is it factually
10 accurate based on your recollection and understanding?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: And you've read it, you've gone
13 through it for at least five minutes here, so you've refreshed
14 yourself. So that's, it's safe to say that you're giving a
15 true and correct answer to my question.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Okay.

18 MR. OSHINSKY: So the answer is yes, you were
19 convicted of it?

20 THE WITNESS: Yes.

21 BY MR. OSHINSKY:

22 Q And isn't it also true that you were convicted of
23 four counts of sodomy for having deviant sexual intercourse
24 with children who were between nine and fourteen years of age?

25 A No.

1 Q Is it true that you were convicted of four counts
2 of sodomy for having deviant sexual intercourse with children
3 under the age of 14?

4 A Yes.

5 Q And you were convicted of six counts of deviant
6 sexual assault of a child in the first degree, correct?

7 A Which count is that, sir?

8 Q I think it's count --

9 A The answer to that would be yes.

10 Q Okay. And isn't it also true that you were
11 convicted of two counts of deviant sexual assault of a child
12 in the second degree?

13 A Yes.

14 JUDGE SIPPEL: I'm listening, I'm listening.

15 MR. OSHINSKY: Okay. All the victims involved in
16 the crimes you were convicted of were boys, is that correct?

17 THE WITNESS: Were boys?

18 BY MR. OSHINSKY:

19 Q Boys.

20 A Yes.

21 Q These are all felony offenses, correct?

22 A Yes.

23 Q Have these convictions led to the revocation of
24 your previous Commission licenses that you held, correct?

25 A Yes.

1 Q It's your believe, isn't it, that you were not
2 guilty of these crimes?

3 A No, I was guilty.

4 Q You were guilty? But you did not plead guilty to
5 the crimes of deviant sexual assault of a child, correct?

6 A I don't know. It was a stipulation and I think
7 it's attached here.

8 JUDGE SIPPEL: Let me see if I can help. There was
9 a trial, is that correct? It was a criminal trial?

10 MR. OSHINSKY: Yes, Your Honor.

11 JUDGE SIPPEL: Well, I'm asking the witness. Can
12 you remember anything about the criminal trial?

13 THE WITNESS: Yes.

14 JUDGE SIPPEL: Okay. And what was your lawyer's
15 advice with respect to pleading to a plea of guilty or not
16 guilty?

17 THE WITNESS: I don't know that he gave one. It's
18 been so long I really can't recall. I know that --

19 JUDGE SIPPEL: Really?

20 THE WITNESS: Yes, they --

21 JUDGE SIPPEL: I mean, as one thing a lawyer's
22 going to do, he's going to advise you as to whether or not to
23 plea in, as the expression goes. Was he a criminal lawyer?

24 THE WITNESS: Yes. He advised that we were going
25 to stipulate certain things on, and there's a document, and

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1 I was sentenced to all in that document.

2 JUDGE SIPPEL: Where's the document.

3 THE WITNESS: Jerry, do you have that?

4 That is the document, Your Honor.

5 MR. JACOBS: Your Honor, may I interject?

6 JUDGE SIPPEL: You're objecting?

7 MR. JACOBS: Interject. May I say something?

8 JUDGE SIPPEL: Well, I don't know if there's a such
9 a thing as an interjection. There's an I object.

10 MR. JACOBS: I just want to say something.

11 MR. OSHINSKY: Your Honor, if I could just --

12 JUDGE SIPPEL: Let him finish.

13 Okay, sir. No, go ahead. I'm saying let you
14 finish.

15 MR. OSHINSKY: Oh, I was going to say, the charging
16 document that Mr. Jacobs furnished us is the, has within it
17 the facts that Mr. Rice stipulated to.

18 JUDGE SIPPEL: And that's all part of Exhibit 10,
19 correct?

20 MR. OSHINSKY: Yes.

21 JUDGE SIPPEL: I got you, thank you.

22 MR. OSHINSKY: Should I go on?

23 JUDGE SIPPEL: Yes, please.

24 MR. JACOBS: Can I clarify for the record what this

25 --

1 JUDGE SIPPEL: No, no, no, you can't do that now.
2 You either object or let him finish.

3 MR. OSHINSKY: So the answer to the question, you
4 did not plead guilty to the crimes of deviant sexual assault
5 on a child, correct? You went to trial.

6 THE WITNESS: Yes, we went to a bench trial.

7 BY MR. OSHINSKY:

8 Q Right. On a stipulation of facts, correct?

9 A Yes.

10 Q And so you made the State of Missouri go to trial
11 rather than plead guilty?

12 A Yes.

13 Q And at that trial you were convicted of the crimes
14 that we were just talking about, is that correct?

15 A Yes.

16 Q In 1994, the Department of Corrections opposed your
17 early release from prison because you did not plead guilty,
18 did not admit your guilt or show remorse, is that correct?

19 A I'm not aware of that.

20 MR. OSHINSKY: Your Honor, one of the Bureau's
21 exhibits in Direct Case Exhibit 4 at Page 24.

22 MR. KNOWLES-KELLETT: It's the notebook.

23 MR. OSHINSKY: Yes, Your Honor.

24 JUDGE SIPPEL: Oh, from Mr. Rice. Let's see, what
25 is it now?

1 MR. KNOWLES-KELLETT: That's for the witness, Your
2 Honor.

3 JUDGE SIPPEL: Well, I know it is but what is the
4 Exhibit number?

5 MR. KNOWLES-KELLETT: Number 23, I'm sorry.

6 JUDGE SIPPEL: Number 3?

7 MR. KNOWLES-KELLETT: It's Exhibit 4 at Page 23.

8 JUDGE SIPPEL: All right.

9 MR. KNOWLES-KELLETT: And actually, that can save
10 you stepping over this, Your Honor.

11 JUDGE SIPPEL: Yes. Our insurance is not that
12 good. All right. This is what he's talking about. You see
13 that page? This is the one that has a signature on it, is that
14 correct?

15 MR. OSHINSKY: Yes, Your Honor.

16 JUDGE SIPPEL: Okay. Go ahead.

17 MR. OSHINSKY: Timothy Vaughn.

18 JUDGE SIPPEL: Go ahead. The witness, by the way,
19 has a full set of your exhibits and is looking at the one
20 you're concerned with right now.

21 THE WITNESS: Could you repeat your question, Mr.
22 Oshinsky?

23 MR. OSHINSKY: I said in 1994, the Department of
24 Corrections opposed your early release from prison because you
25 did not plead guilty, did not admit your guilt or show

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1 remorse, is that correct?

2 THE WITNESS: This is a letter from Mr. Vaughn who
3 was the prosecuting attorney.

4 MR. OSHINSKY: All right, Mr. Rice, it's a yes or
5 no question. You've already told us that you were tried on
6 a stipulated set of facts, and you were convicted, right?

7 THE WITNESS: Correct.

8 MR. OSHINSKY: You didn't plead guilty.

9 THE WITNESS: Correct.

10 MR. OSHINSKY: Okay.

11 JUDGE SIPPEL: So what is the follow up? The
12 follow up is --

13 MR. OSHINSKY: Is that --

14 JUDGE SIPPEL: -- whose statement is that, that
15 you're reading?

16 MR. OSHINSKY: That's the statement from the
17 prosecutor in the case, Your Honor.

18 JUDGE SIPPEL: Okay. And what is it that you want
19 to get a yes answer from, what particular language that he
20 uses?

21 MR. OSHINSKY: That the prosecutor's office opposed
22 early release for Mr. Rice based on his failure to plead
23 guilty.

24 JUDGE SIPPEL: And that's what it says on that
25 document?

1 MR. OSHINSKY: Correct, Your Honor.

2 JUDGE SIPPEL: Now, that happened, didn't it?

3 THE WITNESS: This was written before I reported
4 to prison. If you look at the date on this --

5 JUDGE SIPPEL: What is the date?

6 THE WITNESS: The date on here is September 27th,
7 1994.

8 JUDGE SIPPEL: And when did you report to prison?

9 THE WITNESS: It was in the fall of 1994.

10 JUDGE SIPPEL: Well, are we, do we have a quibble
11 here? I mean --

12 MR. OSHINSKY: Your Honor, the document does speak
13 for itself. It states the State is vehemently opposed to
14 early release of this defendant. Whenever that argument was
15 made by Mr. Rice's attorney, this was the State's position.

16 JUDGE SIPPEL: All right, all right. So you will
17 admit anyway that that's what appears on that page before you?

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: And is it your recollection that
20 that was exactly the decision that the State took at that
21 time?

22 THE WITNESS: I'm not sure I was ever informed of
23 that or saw that at that time.

24 JUDGE SIPPEL: When?

25 THE WITNESS: When this was written.

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1 JUDGE SIPPEL: I hear you, I hear you. I'm just
2 perplexed. I would think something like that, I mean, it was
3 kept from you? I mean, that's a very important document when
4 you're in prison.

5 THE WITNESS: I wasn't in prison at that date.

6 JUDGE SIPPEL: Oh, now this is really a quibble.
7 On or about, this is 1994 you entered prison, isn't that
8 right?

9 THE WITNESS: Yes, sometime.

10 JUDGE SIPPEL: Some time?

11 THE WITNESS: Yes.

12 MR. JACOBS: Your Honor, may I supply a date here?

13 JUDGE SIPPEL: Yes, can you please?

14 MR. JACOBS: He began, Mr. Rice began his prison
15 term on September 30, 1994.

16 JUDGE SIPPEL: All right. Now what is the date on
17 that document?

18 MR. OSHINSKY: September 27, Your Honor. Your
19 Honor, if --

20 JUDGE SIPPEL: No, listen. That is --

21 MR. OSHINSKY: It just means that that argument was
22 made on Mr. Rice's behalf.

23 JUDGE SIPPEL: That is a quibble. Do you know what
24 a quibble is?

25 MR. OSHINSKY: Yes.

1 JUDGE SIPPEL: So answer the question as best you
2 can. I know it was not on the day that you entered into
3 prison, it was three days before or whatever. Am I counting
4 it right?

5 MR. OSHINSKY: Yes.

6 JUDGE SIPPEL: Is that accurate, the statement that
7 you have before you, without giving any consideration to the
8 date, the exact date.

9 THE WITNESS: It appears to be accurate. I think
10 this had to do with not giving parole.

11 JUDGE SIPPEL: He was right, I mean, the question
12 is very relevant.

13 THE WITNESS: Okay.

14 JUDGE SIPPEL: Okay, and go ahead.

15 MR. OSHINSKY: Now, Mr. Rice, it's your testimony
16 that you did not commit all the crimes that are part of this
17 stipulation that you were convicted under, is that correct?

18 THE WITNESS: No, I was guilty except for one that
19 I did not. However, on the stipulation it was all or nothing.

20 MR. OSHINSKY: And what does that mean?

21 THE WITNESS: The only way that the stipulation
22 would be put in is all the charges put on the stipulation.

23 MR. OSHINSKY: So in other words, you're denying
24 that you were guilty of one of the charges that you stipulated
25 to, is that correct?

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1 THE WITNESS: Correct.

2 JUDGE SIPPEL: What is that, what crime is that,
3 what charge is that?

4 THE WITNESS: It was one of them on there. But we
5 didn't have a trial and we didn't have the evidence. And it
6 was just a stipulation. I don't know if you would call it a
7 plea agreement, a plea agreement or whatever it was.

8 MR. OSHINSKY: Your Honor, it is what it is. A
9 stipulation of facts is an agreed statement of facts that is
10 in effect an arrangement between the State and the Defendant,
11 and that they go to trial on. And that is the case here.
12 That's what the documents show.

13 JUDGE SIPPEL: Yes. It's a very significant
14 document. You seem to be treating it lightly. It's a very
15 significant document. And I would like to know in that
16 document what is the charge that you say you were not, you
17 didn't commit?

18 THE WITNESS: There was one count on there that,
19 on there. But at that point we just knew we were really
20 guilty and we wanted to go through the process and move on.

21 JUDGE SIPPEL: But this is the stipulated facts
22 that were submitted in the bench trial, is that right?

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: Well, why weren't, why was not this
25 prevented in the guilty plea? I mean, yes, in a guilty plea.

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1 THE WITNESS: Because I told the lawyers and they
2 said look, Mike, it's all or nothing.

3 JUDGE SIPPEL: Yes.

4 THE WITNESS: Yes, all or nothing.

5 JUDGE SIPPEL: But why did you force the State to
6 go to trial on that? You're coming at this the same ends,
7 you're getting the same result whether you pled guilty or not.
8 You knew you committed these crimes, you weren't going to
9 defend yourself against them. You entered into a stipulation.
10 And then the judge had to make a decision. I'm sure it wasn't
11 a very hard decision to make.

12 But nonetheless, a guilty plea is usually taken --
13 well, you see what happened. A guilty plea is in your favor
14 under these circumstances. For some reason or other, you and
15 your lawyer or both decided to plead guilty and now it's being
16 held against you on your first crack at parole. You're
17 nodding your head yes. What am I supposed to take from that?
18 Do you see my quandary?

19 THE WITNESS: I see, Your Honor, yes. I believe
20 that I had an interview with someone from probation and
21 parole, and that lady wrote a report.

22 JUDGE SIPPEL: Who was that lady?

23 THE WITNESS: I don't recall the name.

24 JUDGE SIPPEL: Okay, she wrote a report. And then?

25 THE WITNESS: I think it was called pre-sentence

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1 investigation. Does that sound correct?

2 JUDGE SIPPEL: Sounds good to me. I'm not a
3 criminal judge, but I watch television too.

4 THE WITNESS: And we went through the information.
5 I was very distraught that day. I had a call at 9 o'clock in
6 the morning, my mother had just passed away in the nursing
7 home. But I went there.

8 JUDGE SIPPEL: Well, did your lawyer ask for a
9 continuance or anything?

10 THE WITNESS: No.

11 JUDGE SIPPEL: That would have been a possibility.
12 I don't know how the judge would have treated it. I'm just
13 curious --

14 THE WITNESS: This was, I believe, before the bench
15 hearing and trial.

16 JUDGE SIPPEL: Yes.

17 THE WITNESS: It was some months before.

18 JUDGE SIPPEL: Okay. But still, the day that you
19 appeared in court, your mother passed away in a nursing home.

20 THE WITNESS: No, that was the day that I was
21 interviewed by the lady from probation and parole.

22 JUDGE SIPPEL: Oh, and you knew about the fact that
23 she had passed away before you had the interview?

24 THE WITNESS: Yes.

25 JUDGE SIPPEL: And you never asked could you

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1 postpone this interview because my mother just died?

2 THE WITNESS: No, I think it was one of those
3 things that it was a requirement that I go and I was just
4 answering her questions.

5 JUDGE SIPPEL: Okay. That's the answer, that's his
6 answer. Go ahead, Mr. Oshinsky.

7 MR. OSHINSKY: Mr. Rice, isn't it true that you
8 believe the stipulation you made in the Missouri State Court
9 to these crimes was not an admission of guilt?

10 THE WITNESS: I would have to read it. I don't
11 recall now.

12 MR. OSHINSKY: Well you were telling us, and you
13 told His Honor that you are not responsible for one of the
14 crimes that you stipulated to and were convicted of. That's
15 correct, right?

16 THE WITNESS: Correct.

17 MR. OSHINSKY: And so therefore you're not
18 accepting guilt for that particular crime, is that correct?

19 THE WITNESS: Well, I accepted guilt with the
20 stipulation as it's written.

21 MR. OSHINSKY: Which one of these crimes that you
22 stipulated to are you telling us now you did not commit?

23 JUDGE SIPPEL: Look at the list.

24 THE WITNESS: I can't see the names on here, so I
25 can't answer that.

1 JUDGE SIPPEL: You can't see the names?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: Of who?

4 MR. OSHINSKY: They're redacted.

5 THE WITNESS: They're redacted.

6 MR. OSHINSKY: But their initials identify them,
7 Your Honor.

8 THE WITNESS: I don't see them on this document.

9 MR. JACOBS: There are no initials in Exhibit 10.

10 JUDGE SIPPEL: As I take it, this is a document
11 that the Bureau obtained from the --

12 MR. OSHINSKY: From Mr. Rice's counsel.

13 JUDGE SIPPEL: Pardon me?

14 MR. OSHINSKY: From Mr. Rice's counsel.

15 JUDGE SIPPEL: Oh, from his counsel, from his --
16 do you know anything about who, I'm asking Mr. Rice, now, do
17 you know who made those deletions or those black marks
18 covering up the document, covering up the document?

19 THE WITNESS: No.

20 JUDGE SIPPEL: They weren't always that way.

21 MR. OSHINSKY: So Mr. Rice, looking at this
22 document, you can't tell which crimes you committed and which
23 ones you did not that day?

24 JUDGE SIPPEL: Is it possible that this being a
25 public document, that they wanted to protect the minors?

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1 Could these be the names of minors?

2 MR. RICE: That's probably correct.

3 JUDGE SIPPEL: Well why am I right and you can't
4 remember. You don't remember that, I mean, you don't really
5 know that.

6 THE WITNESS: There's 12 counts here with different
7 victims. And I can't identify the one that Mr. Oshinsky asked
8 about.

9 JUDGE SIPPEL: Okay, but says blank would testify
10 as to Count 2. That would be somebody's name. I'm trying to
11 understand why you can't help this along, why can't you tell
12 me that? Or tell Mr. Oshinsky that.

13 MR. OSHINSKY: Mr. Rice, I'll direct your attention
14 to Count number 12.

15 THE WITNESS: Okay.

16 MR. OSHINSKY: Is that the one you're talking about
17 that you did not commit?

18 THE WITNESS: I believe that is correct.

19 JUDGE SIPPEL: Oh, I see, I see. Well do you --

20 MR. OSHINSKY: I'm sorry, go ahead, Your Honor.

21 JUDGE SIPPEL: Can you just from your recollection
22 and from reviewing this case with Counsel, can you just
23 describe what the crime was that you had not been, you were
24 not guilty of? Forget about this document.

25 THE WITNESS: Okay. I denied at that time, and I

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1 will today, that the whole event did not exist.

2 JUDGE SIPPEL: Well see, I don't know what you're
3 talking about when you say that whole event.

4 THE WITNESS: The Count 12.

5 JUDGE SIPPEL: Oh, Count 12?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: But that's the only one?

8 THE WITNESS: Correct.

9 JUDGE SIPPEL: Fair enough.

10 MR. JACOBS: Your Honor, can we take a brief break?

11 JUDGE SIPPEL: Oh, you have to -- okay. All right,
12 we'll take a five minute --

13 MR. OSHINSKY: Your Honor, I would like to get an
14 answer to my last question before Mr. Rice --

15 JUDGE SIPPEL: Okay, we'll do that.

16 MR. OSHINSKY: -- confers with his Counsel. Is it
17 true that the stipulation you made in the Missouri State Court
18 to these crimes, to you was not an admission of guilt?

19 MR. RICE: I don't think this is the document.
20 Where is the stipulation? There was a page on that, and I
21 can't remember --

22 MR. OSHINSKY: This is the charging document, Mr.
23 Rice. You can answer my question yes or no.

24 THE WITNESS: I'm not sure. I'm not sure.

25 MR. OSHINSKY: You're answer is you're not sure

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1 whether you believe the stipulation you made is an admission
2 of guilt? You can answer that yes or no.

3 THE WITNESS: Well, I believe it had the effect of
4 an admission of guilt, yes.

5 MR. OSHINSKY: You think it is an admission of
6 guilt?

7 THE WITNESS: Yes.

8 MR. OSHINSKY: The stipulation. Yet you're telling
9 use here that you did not commit all of these offenses, is
10 that correct?

11 THE WITNESS: Correct.

12 JUDGE SIPPEL: Well you did, it's all but one.

13 THE WITNESS: All but one.

14 JUDGE SIPPEL: We're going to take a break now.
15 Mr. Jacobs has -- I'm going to grant the break, five minutes.
16 We have five minutes.

17 (Whereupon, the above-entitled matter went off the
18 record at 11:30 a.m. and resumed at 10:40 a.m.)

19 JUDGE SIPPEL: You're still under oath, Mr. Rice.

20 THE WITNESS: Yes, Your Honor.

21 JUDGE SIPPEL: Okay. And did you speak to anyone
22 during the break?

23 THE WITNESS: No.

24 JUDGE SIPPEL: Let's go. Let's go.

25 MR. OSHINSKY: Mr. Rice, it's true that you believe

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1 that, I'm sorry. It's true that you believe these sexual
2 encounters with the children, these actions were out of your
3 control, correct?

4 THE WITNESS: Yes.

5 BY MR. OSHINSKY:

6 Q And at time, at various times you blamed your use
7 of alcohol as a reason why these kind of sexual encounters
8 with children occurred?

9 A That was one of the factors.

10 Q In fact, you've told me at your deposition that you
11 were typically binge drinking --

12 A Correct.

13 Q -- when these encounters with the children
14 occurred? You haven't stopped drinking, have you?

15 A I do not drink, there's no alcohol in the house.
16 If I go to a Mexican restaurant I'll have a margarita because
17 they taste so good. One.

18 Q So your testimony is that you occasionally do
19 drink?

20 A Occasionally.

21 Q And you also told Dr. Duncan-Hively that you
22 continue to drink occasionally?

23 A Yes.

24 JUDGE SIPPEL: When was the last time you were in
25 a stage of intoxication, or even so-called buzzed?

1 THE WITNESS: Oh, golly, probably 20 years ago.
2 Or earlier.

3 JUDGE SIPPEL: All right.

4 MR. OSHINSKY: And Mr. Rice, you've been advised
5 that you are somebody who's labeled an alcohol abuser?

6 THE WITNESS: I don't know that I've heard someone
7 say that.

8 BY MR. OSHINSKY:

9 Q Have you been to AA meetings?

10 A I did when I was in prison, yes.

11 Q But you have been diagnosed that way. Didn't Dr.
12 Stillings diagnose you as an alcohol abuser?

13 A I believe that is correct, yes.

14 Q Now before you were convicted of these sexual
15 offenses, you used to operate radio stations, correct?

16 A Yes.

17 Q And you would sometimes invite the kids from the
18 neighborhood to see your radio station?

19 A No.

20 Q You never did?

21 A No.

22 Q Do you remember when I took your deposition back
23 in September of last year?

24 A Yes.

25 MR. OSHINSKY: So I'm looking at Mr. Rice's

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1 deposition Page 101.

2 JUDGE SIPPEL: And Counsel will have an opportunity
3 to get to it.

4 MR. OSHINSKY: If I can read from the deposition.

5 JUDGE SIPPEL: Let Mr. Jacobs get his place.

6 MR. JACOBS: I'm there.

7 JUDGE SIPPEL: Go ahead, you can read it.

8 MR. OSHINSKY: At Line 10 on Page 101: One of the
9 places you drove to was to one of the transmitter stations,
10 right? A radio relay station, is that correct? No. No, you
11 did not, question. Answer: No, (redacted) once in a while
12 would go over to the station with me when I had to pick up
13 something. And (redacted) is one of the children who accused
14 you in these crimes, is that correct?

15 THE WITNESS: Yes.

16 MR. OSHINSKY: And so do you care to change your
17 answer now that I've read to you from your deposition?

18 THE WITNESS: Yes, I recall saying that.

19 MR. OSHINSKY: And did you do that, did you drive
20 the children to your stations on occasion?

21 THE WITNESS: Yes. But it wasn't our station. It
22 was one that I was a contract --

23 MR. OSHINSKY: I just read to you your answer from
24 the deposition, is that correct? You told me no --

25 THE WITNESS: Can you read it again?

1 MR. OSHINSKY: -- (redacted) once in a while would
2 go over to the station with me when I had to pick something
3 up.

4 JUDGE SIPPEL: Mr. Jacobs, why don't you just take
5 your copy over here and show it to the witness so that we're
6 sure --

7 MR. OSHINSKY: Your Honor, we have extra copies of
8 the deposition that were amended.

9 MR. JACOBS: I object to the way that Mr. Oshinsky
10 is characterizing this testimony.

11 JUDGE SIPPEL: Well, it is cross examination. What
12 page is it on?

13 MR. OSHINSKY: It's 101. Your Honor should have
14 a copy of it as well.

15 JUDGE SIPPEL: Well, you want to give me one?

16 MR. OSHINSKY: Sure, you can have that one. We can
17 give this one to Mr. Rice.

18 JUDGE SIPPEL: He's already turned to the page.
19 Okay. I don't want, I want no further use of names of these
20 young people.

21 MR. OSHINSKY: Actually, Your Honor, in the
22 charging document, they are abbreviated to their initials.
23 And the only reason I read it is because that's the way the
24 answer was in the deposition. But from now on --

25 JUDGE SIPPEL: No, I'm talking about in the public

1 record.

2 MR. OSHINSKY: Yes.

3 JUDGE SIPPEL: Put the initials in or some such
4 thing as that. And you're now going to have to, what do they
5 call it?

6 MR. OSHINSKY: Redact.

7 JUDGE SIPPEL: Redact.

8 MR. OSHINSKY: He's actually referred to in the
9 charging document as C.Z. Okay, Your Honor, I'll remember
10 that.

11 THE WITNESS: Mr. Oshinsky, what page are you
12 referring to?

13 BY MR. OSHINSKY:

14 Q Page 101 of your deposition at Line 10 through 20.
15 So your answer to my question is that you did on occasion
16 invite kids to your radio stations and drove them there,
17 correct?

18 A I did not invite them. When I went there to do
19 some work, he wanted to go along. He lived next door. So he
20 went with me.

21 Q But he was one of the neighborhood children,
22 correct?

23 A Correct.

24 Q Now at various times you blamed the children you've
25 molested for the sexual activity that took place with them,

1 correct?

2 A I did not blame them.

3 Q Did you ever make the statement that they enjoyed
4 having sex with you?

5 A I don't recall.

6 Q But it's possible?

7 A It's possible.

8 Q And is that your view of it, that they enjoyed
9 having sex with you, some of them?

10 A That's not my view now.

11 Q Was it your view back then?

12 A I don't know.

13 Q Well, you in your direct testimony, you claimed
14 that these were non-violent crimes that you were convicted of,
15 is that correct?

16 A Correct.

17 Q So you were saying that your victims were willing
18 victims, is that correct?

19 A Well, there was no force involved. And I don't
20 recall much of the incidents there. It was so long ago.

21 Q So the answer is you don't remember?

22 A I do not remember.

23 MR. OSHINSKY: Can you tell, I'm sorry, strike
24 that. You groomed your victims in preparation for --

25 JUDGE SIPPEL: Well, just a minute, I'm not

1 finished with this page. This is 101, right?

2 MR. OSHINSKY: Yes, Your Honor.

3 JUDGE SIPPEL: You're saying that he --

4 MR. OSHINSKY: That was --

5 JUDGE SIPPEL: I said, so the question is then is
6 he the individual you had sex with over at the relay station?

7 MR. OSHINSKY: I haven't gotten to that yet, Your
8 Honor.

9 JUDGE SIPPEL: Oh, okay. Sorry. I'm sorry.

10 MR. OSHINSKY: I gave you one line too. And Mr.
11 Rice, your treatment providers in prison and your other
12 treatment providers have talked to you about grooming children
13 for sex, haven't they?

14 THE WITNESS: Yes. Also in most --

15 MR. OSHINSKY: And in these instances that you were
16 convicted of, you groomed your victims in preparation for
17 sexual encounters, is that correct?

18 THE WITNESS: I don't recall it that way.

19 MR. JACOBS: Your Honor, how is this line of
20 questioning not re-litigating --

21 MR. OSHINSKY: Your Honor, if Mr. Jacobs wants to
22 make an objection, he should make the objection.

23 MR. JACOBS: This is my objection.

24 JUDGE SIPPEL: Well, what are you objecting to, the
25 relevance of it?

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1 MR. JACOBS: I believe it violates the hearing
2 designation order statements against re-litigating facts and
3 conclusions in the State Court proceedings.

4 JUDGE SIPPEL: I see nothing being re-litigating
5 here. All he's doing is looking at a document and asking the
6 witness is that true or isn't that true. That's all he's
7 doing. This is not litigation in the sense that I think that
8 the Commission meant.

9 They're not putting evidence on of each of these
10 counts, criminal counts which he had pled guilty. That's not
11 happening. And I don't want to waste the time going through
12 that kind of an objection. Go ahead, Mr. Oshinsky.

13 MR. OSHINSKY: So is your answer yes or no, Mr.
14 Rice, that you groomed the victims in preparation for having
15 sex with them, as you understand the word grooming to mean?

16 THE WITNESS: Yes.

17 MR. OSHINSKY: Your answer is yes, you did groom
18 them?

19 THE WITNESS: I have to qualify that a little bit,
20 Mr. Oshinsky.

21 MR. OSHINSKY: Well, it's a yes or no question, Mr.
22 Rice.

23 THE WITNESS: Okay.

24 JUDGE SIPPEL: Answer yes or no and then qualify
25 it if you would.

1 THE WITNESS: Okay. At the time I didn't believe
2 I was, so that would be a no.

3 MR. OSHINSKY: So no, you did not groom these
4 children?

5 THE WITNESS: No.

6 MR. OSHINSKY: Were you --

7 JUDGE SIPPEL: Did you know at the time, at that
8 date what grooming was?

9 THE WITNESS: No.

10 JUDGE SIPPEL: So it might have been grooming, but
11 you don't remember --

12 THE WITNESS: No, I don't remember.

13 JUDGE SIPPEL: -- that term?

14 THE WITNESS: I mean, I think allowing people in
15 your house and being friends with them, if that's grooming,
16 then the answer to that would be yes.

17 JUDGE SIPPEL: Well let me take an example. Let's
18 say with CZ that you invite him in your house, and then what
19 would happen?

20 THE WITNESS: Oh, basically he would come over to
21 watch television or --

22 JUDGE SIPPEL: At your invitation?

23 THE WITNESS: He lived next door. He would knock
24 on the door and ask to come in.

25 JUDGE SIPPEL: To watch television?

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1 THE WITNESS: Yes, to watch TV or I had a
2 collection of, back then, compact disks.

3 JUDGE SIPPEL: And?

4 THE WITNESS: That's about it.

5 JUDGE SIPPEL: He didn't come over looking for sex?

6 THE WITNESS: No, I don't believe he did.

7 JUDGE SIPPEL: Well, you would know, wouldn't you?
8 If someone knocks on your door and said I want to have sex,
9 wouldn't you know that?

10 THE WITNESS: I would know that, yes.

11 JUDGE SIPPEL: Well, what other circumstances could
12 there be?

13 THE WITNESS: What other circumstance for him
14 coming over?

15 JUDGE SIPPEL: Well, that he was coming over asking
16 for sex, I mean, he's not asking it outright.

17 THE WITNESS: I don't recall him ever asking for
18 sex.

19 JUDGE SIPPEL: And you didn't, it was not implied
20 in anything he says.

21 THE WITNESS: Correct.

22 JUDGE SIPPEL: So wasn't your MO to ply these kids
23 with liquor?

24 THE WITNESS: No.

25 JUDGE SIPPEL: You didn't? You never gave any

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1 liquor to any of them?

2 THE WITNESS: No.

3 JUDGE SIPPEL: Never?

4 THE WITNESS: Never. They had liquor but they
5 brought their own.

6 JUDGE SIPPEL: You know, you're really getting
7 quibbling here. They brought their own, but you were
8 encouraging it to be drunk in your place. Or drank, whatever.
9 You were encouraging it, were you?

10 THE WITNESS: I certainly permitted it, so I guess
11 that would be encouraging.

12 JUDGE SIPPEL: Well, yes, I mean, you know, you're
13 not helping me at all. This doesn't make any sense that
14 somebody's just going to come over and watch TV and jump into
15 bed with you. I don't think things work that way. But I might
16 be wrong. But I don't think so. Well, you're kind of just
17 sitting there staring at me.

18 THE WITNESS: No, I'm trying --

19 JUDGE SIPPEL: Do you have any response to this?

20 THE WITNESS: -- to assimilate what you're saying.

21 JUDGE SIPPEL: You understand it?

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: And?

24 THE WITNESS: Well, they didn't just hop in bed.

25 JUDGE SIPPEL: No. You know, I'm not looking for

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1 quibbles. I want to know what the heck happened. It doesn't
2 have to be any particular individual.

3 THE WITNESS: Okay.

4 JUDGE SIPPEL: But what the heck happened?

5 THE WITNESS: Well, I was drinking beer at that
6 time too.

7 JUDGE SIPPEL: A lot of beer?

8 THE WITNESS: What?

9 JUDGE SIPPEL: A lot of beer?

10 THE WITNESS: Yes. Maybe a 12 pack that night.

11 JUDGE SIPPEL: Before CZ showed up or after?

12 THE WITNESS: During.

13 JUDGE SIPPEL: During, okay.

14 THE WITNESS: During.

15 JUDGE SIPPEL: So, and I'm using CZ in the generic
16 sense.

17 THE WITNESS: I understand.

18 JUDGE SIPPEL: And so what would generally happen?
19 How did you happen to have sex with these children? What were
20 the circumstances? Did you show them porno films?

21 THE WITNESS: No, I did not do that.

22 JUDGE SIPPEL: Well, then what did you do? Did you
23 read them poems?

24 THE WITNESS: No.

25 JUDGE SIPPEL: There's got to be something in

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1 between them knocking on the door and being in bed with you.
2 So what happened then? You were drinking beer, that we have
3 established. And the kids brought their own liquor.

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: And you never gave them your liquor
6 or your beers?

7 THE WITNESS: No. If I had soda in the
8 refrigerator, they could drink that.

9 JUDGE SIPPEL: Okay. But they would bring their
10 own liquor over?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: And was that a condition that if you
13 want to come over, you bring your own liquor?

14 THE WITNESS: No.

15 JUDGE SIPPEL: Well why would they bring their own
16 liquor? Maybe they would come over and think that you would
17 give them liquor, no?

18 THE WITNESS: Well, I did not give liquor, I
19 wouldn't allow smoking of anything illegal in the house.

20 JUDGE SIPPEL: Well, why not?

21 THE WITNESS: Well, I was very against drug usage.

22 JUDGE SIPPEL: That was bad?

23 THE WITNESS: That was bad.

24 JUDGE SIPPEL: But having sex with children was not
25 bad at that time in your life?

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1 THE WITNESS: It certainly, I didn't think at that
2 time that it was as serious as it was.

3 JUDGE SIPPEL: Well, I don't understand that. You
4 mean it was kind of like getting a traffic ticket or
5 something, this is really not as bad as it was? It was a --

6 THE WITNESS: At the time I didn't think it was bad
7 as it was.

8 JUDGE SIPPEL: At the time. Well, you did think
9 it was bad, though?

10 THE WITNESS: I wasn't thinking very clearly there
11 at that time. And I'm not sure what I thought. It was a time
12 that I was mentally ill.

13 JUDGE SIPPEL: Well, this is all in hindsight.

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: Well, I want to know then. Then.

16 THE WITNESS: Then.

17 JUDGE SIPPEL: Let's assume it's a glass.

18 THE WITNESS: Okay.

19 JUDGE SIPPEL: Okay. Was the glass one quarter
20 full, half full, of badness? Something in your head that's
21 telling you this is bad, but not very bad. So how high up the
22 glass would that feeling of badness go?

23 THE WITNESS: On your example, probably half a
24 glass.

25 JUDGE SIPPEL: So you thought that it was 50/50,

1 but you still had, you had convinced yourself that this was
2 not so bad that it couldn't be done, or shouldn't be done?

3 THE WITNESS: Correct.

4 JUDGE SIPPEL: And well, and you say, or perhaps
5 you say it was vulgar results of a mental condition?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: And people who have, don't have
8 mental conditions do not get involved with children, is that
9 what you're saying?

10 THE WITNESS: I'm just talking about my case. I
11 don't know about other people. I do know that --

12 JUDGE SIPPEL: Well, there may be something --

13 THE WITNESS: -- I had an undiagnosed mental
14 condition then, and unfortunately something bad has to happen
15 with a lot of people before you get help.

16 JUDGE SIPPEL: Well, we're not talking about a lot
17 of people, we're just talking about you. And that's all we're
18 talking about.

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: I know that this is referred to as
21 something deviant in a person that does that. My understand
22 of some generic descriptives. But I'm not convinced that you
23 have to have a psychiatric condition before something moves
24 you to have sex with children.

25 I'm just not sure of that. Maybe I can get

1 educated before I leave here. But the fact, what I'm trying
2 to determine, the fact that you had bipolar disorder, which
3 you didn't know about at the time, is that right?

4 THE WITNESS: Correct.

5 JUDGE SIPPEL: Was that the determinate factor that
6 got you to have sex with kids? That doesn't make any sense.

7 THE WITNESS: It didn't make any sense at the time
8 because I didn't know I had that disorder.

9 JUDGE SIPPEL: Well that doesn't make any sense to
10 me saying that now. The fact that you, there's people with
11 bipolar disorders, quite a few of them, and more than we would
12 like to have. And you know, it's a hardship, no question
13 about that. But I've never seen anything that correlates that
14 psychiatric problem with having sex with children, or having
15 sex with anybody for that matter.

16 THE WITNESS: I was told, it was not a doctor, but
17 I was told that one of the things that happen with people that
18 suffer from bipolar is they do very risky things, some of them
19 illegal.

20 JUDGE SIPPEL: Well, that's a far cry from what I'm
21 saying though. It might, you know, maybe perhaps you would
22 like to, somebody might get caught for shoplifting when he was
23 on the wrong end of the bipolar situation. But I'm talking
24 about specifically about molesting children, sexually
25 molesting children.

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1 THE WITNESS: I believe that one of the things that
2 bipolar is doing very risky sexual acts.

3 JUDGE SIPPEL: Can you repeat that answer?

4 THE WITNESS: I have been told that one of the
5 symptoms of some of bipolar is attempting very risky sexual
6 acts, in my case illegal very serious.

7 JUDGE SIPPEL: Who told you that?

8 THE WITNESS: I think one of the therapists I had.

9 JUDGE SIPPEL: You think?

10 THE WITNESS: Well, that's how I got the
11 information.

12 JUDGE SIPPEL: Well, I know that. I know that,
13 that's how you got the -- well I don't know that. But is
14 there any literature on this? Maybe I'm going to get educated
15 here. Maybe this is not that tough a thing to handle. But
16 I do not understand why being bipolar puts you in a position
17 where you're inclined to have sex with children. And if you
18 didn't have bipolar, you wouldn't have that inclination
19 because I guess that's what you're really saying.

20 THE WITNESS: That's what I think I'm trying to
21 say, Your Honor.

22 JUDGE SIPPEL: Well, you're doing well. But I
23 don't know why, in my experience I've never seen anybody,
24 anything that showed it was such a determinate effect of
25 bipolar disorder that it would go so low as to be assaulting

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1 children. As I said, shoplifting, there's a lot of things
2 that might be done. Let me ask you this, you said that there
3 was drinking going on.

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: And going back to the glass analogy,
6 how much drinking was there, in general, how much drinking was
7 going on? A quarter, a half, three quarters?

8 THE WITNESS: Those that came over didn't drink all
9 the time. But much of the time they did.

10 JUDGE SIPPEL: Let's say, let's start with you.

11 THE WITNESS: Okay.

12 JUDGE SIPPEL: Full glass, three quarters, half
13 glass?

14 THE WITNESS: At least a half at that time.

15 JUDGE SIPPEL: At least a half.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Well, I'm going to assume that a
18 half would not make you legally intoxicated. You were just,
19 what do they call it, a buzz? You kind of had a buzz?

20 THE WITNESS: Well, I was buzzed to the point that
21 I would pass out.

22 JUDGE SIPPEL: Well, that's pretty serious stuff.
23 So when you passed out, you would not be a threat to anybody.

24 THE WITNESS: Correct.

25 JUDGE SIPPEL: And when you woke up, were any of

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1 these kids still there?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: And what would the kids be doing?
4 Watching TV?

5 THE WITNESS: Yes, watching TV. Some of them
6 played cards.

7 JUDGE SIPPEL: Just waiting for you to wake up?

8 THE WITNESS: What?

9 JUDGE SIPPEL: Just waiting for you to wake up?

10 THE WITNESS: No, not necessarily. I just my house
11 at that time had become, it was actually an apartment that
12 became kind of a hangout for them.

13 JUDGE SIPPEL: Well that's interesting.

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: And who encouraged the hang out
16 approach?

17 THE WITNESS: I permitted it.

18 JUDGE SIPPEL: Did you encourage it?

19 THE WITNESS: I suppose I did, yes.

20 JUDGE SIPPEL: So the word gets around to kids that
21 you got a neat place to hang out, so they come over and hang
22 out?

23 THE WITNESS: That's a fair statement.

24 JUDGE SIPPEL: And there's no, they have their own
25 alcohol, you do not supply any alcohol?

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1 THE WITNESS: Not to them, no.

2 JUDGE SIPPEL: You're sure?

3 THE WITNESS: Positive.

4 JUDGE SIPPEL: And drugs are not allowed, marijuana
5 is not allowed?

6 THE WITNESS: No.

7 JUDGE SIPPEL: Marijuana has never been smoked in
8 that house?

9 THE WITNESS: Not to my knowledge.

10 JUDGE SIPPEL: Well, you would know, wouldn't you.
11 If you came in you would smell it. Why would anybody want to
12 go to your house and smoke it without you being there? Did
13 the kids have access to your house when you were not there?

14 THE WITNESS: No.

15 JUDGE SIPPEL: You didn't leave a key on a ledge
16 or something for them?

17 THE WITNESS: No.

18 JUDGE SIPPEL: Okay. Now these incidents, if I'm
19 understanding this right, and let me just ask a question.
20 These incidents of kids passing out on beds, on the bed and
21 then you pulling their drawers down while they were asleep or
22 while they were groggy, what would cause them to become
23 groggy? Was it all liquor?

24 THE WITNESS: I don't ever recall that instance
25 that someone was passed out there.

1 JUDGE SIPPEL: They were always awake?

2 THE WITNESS: They were awake when I was awake.
3 Some of them spent all night there.

4 JUDGE SIPPEL: Well, that's a pretty slick answer.
5 They were awake when you were awake. But they might have been
6 passed out or asleep and you woke them up and then they were
7 awake when you were awake.

8 THE WITNESS: I don't recall that.

9 JUDGE SIPPEL: But if it happened you would recall
10 it, is that right?

11 THE WITNESS: I should have, yes.

12 JUDGE SIPPEL: And again, taking that hypothetical
13 that somehow or other, and you'll admit to that, somehow or
14 other you were able to get their pants off?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: You pulled down their knickers as
17 they say. Okay. Somehow you did that. And at any point did
18 these kids object?

19 THE WITNESS: I don't recall that, no.

20 JUDGE SIPPEL: I mean, you must have had a pretty
21 slick system. I don't understand that. I mean, there was
22 more than one kid. And you never had any problem, I mean, you
23 never had any opposition to what you were doing?

24 THE WITNESS: No.

25 JUDGE SIPPEL: It's hard to believe that. I'm

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1 just, I'm not trying to argue with you, I'm just saying I hope
2 you understand objectively who you're talking to and how I'm
3 receiving what you're telling me.

4 Do you think, or did you form an opinion, or did
5 you have an understanding that these children were themselves
6 sexually deviant, they were not like other children? These
7 would happen to be a particular set of sexually deviant
8 children?

9 THE WITNESS: I wasn't aware of that.

10 JUDGE SIPPEL: Did it ever enter your mind? If
11 they were so compliant --

12 THE WITNESS: I suppose it's a possibility, but it
13 was never discussed.

14 JUDGE SIPPEL: I mean, I've never heard of a
15 situation, of course I don't have that many situations I hear
16 about, of children being compliant, even if it's not, even if
17 force is not used. That they're plied with alcohol,
18 something, I don't know, I don't understand that they would
19 be willingly participating in this stuff. And you had so
20 many, how many kids did you have that you did this with?

21 THE WITNESS: Four.

22 JUDGE SIPPEL: Four. How old were they?

23 THE WITNESS: They varied in age, but I think from
24 16 to probably 13.

25 JUDGE SIPPEL: And those are different ages. So

1 young kids growing, developing have different reactions at
2 different times of their life, at that life span. They all
3 reacted the same way? I mean, given personality differences.

4 THE WITNESS: All of them kept coming over many
5 times.

6 JUDGE SIPPEL: What were you giving them that would
7 cause them to come over?

8 THE WITNESS: A place to hang out.

9 JUDGE SIPPEL: Well, it's the only place to hang
10 out in those days? I mean, this was not a blighted
11 neighborhood or anything like that. These are just kids,
12 regular kids, isn't that right?

13 THE WITNESS: Correct.

14 JUDGE SIPPEL: And how would they come over? I
15 don't understand. Well, I just don't understand. And what
16 I can't understand also is that you have not formulated some
17 kind of an opinion yourself about how did this happen. You're
18 saying you're that straight now. I think you would want to
19 know if you wanted to talk to a psychiatrist and say what the
20 hell was happening there?

21 These kids came over and they let me pull their
22 knickers down and do these things. Weren't you curious?
23 Aren't you curious?

24 THE WITNESS: Absolutely, because that's part of
25 the rehabilitation.

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1 JUDGE SIPPEL: Well, I don't care about the
2 rehabilitation. I'm talking about just plain intellectual
3 curiosity. Now let's assume that this question that you're
4 completely cured from this situation. And you would be
5 asking, you would turn to the document and say document, what
6 the heck was going on here, why were these kids so easy to
7 get. You haven't done that, just out of curiosity.

8 THE WITNESS: That's a good question.

9 JUDGE SIPPEL: I know it's a good question.

10 THE WITNESS: Make me think about that.

11 JUDGE SIPPEL: Well, you have an answer?

12 THE WITNESS: Not now, I don't have an answer other
13 than I think they enjoy talking, being there with their
14 friends.

15 JUDGE SIPPEL: Did they enjoy the sex too?

16 THE WITNESS: Looking back, no.

17 JUDGE SIPPEL: Why looking back, no? Why couldn't
18 you say no, they didn't?

19 THE WITNESS: If you'll notice there's multiple
20 counts. The victims kept coming back and --

21 JUDGE SIPPEL: I asked you a question.

22 THE WITNESS: Okay.

23 JUDGE SIPPEL: You said that in retrospect they
24 didn't like what was happening. I'm saying at the time did
25 they indicate to you in any way or form that they didn't like

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1 the situation?

2 THE WITNESS: No.

3 JUDGE SIPPEL: Were they smiling?

4 THE WITNESS: I'm not sure, I don't recall if they
5 were smiling or not.

6 JUDGE SIPPEL: You're making this very difficult.

7 THE WITNESS: I'm trying not to, Your Honor.

8 JUDGE SIPPEL: I mean, I know it was 20 some odd
9 years ago, am I right?

10 THE WITNESS: Close to 30.

11 JUDGE SIPPEL: Well, we all get old fast. But even
12 that, even 30 years, I would think that this is such a
13 traumatic condition, situation, that it would be a
14 recollection. Do you have dreams about it? Do you dream up
15 saying, in a cold sweat saying oh my God, what I did or
16 anything like that?

17 THE WITNESS: I had a lot of --

18 JUDGE SIPPEL: Nightmares?

19 THE WITNESS: -- nightmares? Probably not.
20 Nightmares. But I realize at a point in time this is wrong
21 and needed to stop.

22 JUDGE SIPPEL: Well, what made you realize this?
23 What event?

24 THE WITNESS: I started to feel guilty.

25 JUDGE SIPPEL: What event, at what point?

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1 THE WITNESS: Well, it was before the arrest, and
2 I started to feel guilty. And I said, you know, this just
3 doesn't seem right to me.

4 JUDGE SIPPEL: And after you started getting those
5 feelings of guilt, did you still continue to react with these
6 children in the way you had?

7 THE WITNESS: No.

8 JUDGE SIPPEL: You stopped it?

9 THE WITNESS: Stopped it, yes.

10 JUDGE SIPPEL: Was there any time an announcement
11 made to the kids I'm, I've got religion. Nothing more, no
12 mas?

13 THE WITNESS: No.

14 JUDGE SIPPEL: You didn't?

15 THE WITNESS: No.

16 JUDGE SIPPEL: Did you apologize to them, say I've
17 got these guilt feelings now, I'm so sorry?

18 THE WITNESS: At that time I did not.

19 JUDGE SIPPEL: Well, why not? What was in your
20 psyche that you didn't do that? I mean, if you had hit them
21 with a hammer accidentally, I think you would be apologizing.
22 I'm sorry, I hit you with a hammer accidentally.

23 But here you're doing something even more, I don't
24 want to say nefarious, but more of an -- I'm trying to say
25 something as having a greater impact even than a hammer on

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1 their psyche. And you're just shaking your head. Do you
2 agree with that, or you don't? You seem --

3 THE WITNESS: I agree with what you're saying, but
4 I don't recall saying to them individually even discussing the
5 act or anything like that.

6 JUDGE SIPPEL: No, I'm not talking about that. You
7 wouldn't have to discuss the act with them. You just say you
8 know, I've really been acting bad lately with you, and I'm
9 really, I'm sorry. They would understand what they mean.

10 THE WITNESS: I think at that time, Your Honor, I
11 didn't realize how bad I was.

12 JUDGE SIPPEL: In what terms bad? In a number of
13 times you did it?

14 THE WITNESS: Well, the act itself, and here I was
15 considered a good person in the community. And most acts like
16 that are done in hush-hush secret.

17 JUDGE SIPPEL: Well, even if it's done in hush-hush
18 secret with children, that doesn't make it good.

19 THE WITNESS: No, absolutely not.

20 JUDGE SIPPEL: I'm trying to see what triggered the
21 change. And you know, you thought it was not so bad at one
22 point, but you always had this inkling that this isn't
23 something altogether good. You knew that it was something
24 that had to be done behind closed doors because society
25 demanded that.

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1 THE WITNESS: That is a fair assessment, yes.

2 JUDGE SIPPEL: But what caused you to get religion,
3 if I can put it that way? You woke up one morning and says
4 oh my, I had a eureka moment. My God, what have I been doing?

5 THE WITNESS: I just decided in my mind at that
6 point in time that this was just wrong, and --

7 JUDGE SIPPEL: Well what, were you reading things,
8 were you doing something with a -- talking to people who
9 talked about this? I don't know, how would it come to you
10 that all of a sudden you got this feeling of guilt when you
11 hadn't had it before?

12 THE WITNESS: Well, I just had guilt. I don't know
13 exactly what thought process I had.

14 JUDGE SIPPEL: Well, you see --

15 THE WITNESS: I still have guilt.

16 JUDGE SIPPEL: Well, do you have the same guilt as
17 you had then, or is this more intense guilt?

18 THE WITNESS: More intense now.

19 JUDGE SIPPEL: Did it have anything to do with the
20 fact that you went to prison?

21 THE WITNESS: No.

22 JUDGE SIPPEL: For what you did?

23 THE WITNESS: No. It certainly was traumatic. And
24 it was a stern warning from society about my actions.

25 JUDGE SIPPEL: Well, at what point in time do you

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1 have to find out that society doesn't like this particular
2 act? You knew all along that murder was not condoned. You
3 knew that bank robbery was not condoned. You know that fraud
4 was not condoned. But the thought that doing this to children
5 was he, it was okay but not okay, if I'm reading you --

6 THE WITNESS: It was faulty rationalization on my
7 part.

8 JUDGE SIPPEL: And this all has to do with
9 rationalization?

10 THE WITNESS: No.

11 JUDGE SIPPEL: I'm trying to think, that is --

12 THE WITNESS: That's where the guilt comes from.

13 JUDGE SIPPEL: I know that. I know that. But
14 there are people who do this type of stuff, I'm told or I read
15 about, that it never enters into their mind to be guilty about
16 it. You're nodding your head.

17 THE WITNESS: No, I'm trying to think. I got to
18 the point where I thought it was wrong.

19 JUDGE SIPPEL: And can you tell me exactly, or
20 close to exactly when that point was?

21 THE WITNESS: It would have been probably early
22 1990 or '91. I can't remember.

23 JUDGE SIPPEL: And what prompted you to get that
24 feeling in 1990 or '91, what event?

25 THE WITNESS: Well, I had no urges to do that and

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1 I was tired of people coming over to the house and I wanted
2 to turn over a different chapter in my life.

3 JUDGE SIPPEL: You mean you were losing your
4 libido?

5 THE WITNESS: No, just had no mental urge to --

6 JUDGE SIPPEL: Well, a mental urge has to be
7 transferred to another part of your body, and was that not
8 happening?

9 THE WITNESS: No it was not.

10 JUDGE SIPPEL: So you decided, what, this is no fun
11 anymore so I'm calling it quits. You kids go home? I don't
12 want any more of this. I'm paraphrasing you, of course. But
13 this is what's going through your mind?

14 THE WITNESS: Right. And then the feelings of
15 guilt and also the feelings of it's wrong. And at that point,
16 it's illegal.

17 JUDGE SIPPEL: Well, it sounds like maybe they were
18 all the factors came into play at one time, the illegality,
19 the moral wrongness of it, your bad feelings about it. I'm
20 trying to think was it a chicken or egg thing here, which came
21 first? Or did they all come simultaneously?

22 THE WITNESS: I think that the process all came
23 about at the same time.

24 JUDGE SIPPEL: It was about the time that you were
25 questioned by the police?

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1 THE WITNESS: No, I believe it was before that.

2 JUDGE SIPPEL: How much before?

3 THE WITNESS: Maybe five or six months.

4 JUDGE SIPPEL: So it was close in time?

5 THE WITNESS: Yes, yes, it was close in time.

6 JUDGE SIPPEL: Did you tell that to any of the
7 prosecutors or any of the police that you had gotten this
8 awakening?

9 THE WITNESS: No, we didn't really make statements
10 to them.

11 JUDGE SIPPEL: Yes, well that's a bad question.
12 Did you ever -- and I think I asked this before. Did you ever
13 apologize to these youths when all of a sudden you got this
14 feeling about five months before you were --

15 THE WITNESS: I did not do it at that time. When
16 the --

17 JUDGE SIPPEL: What time did you do it? At
18 sentencing?

19 THE WITNESS: When we went to the -- the only court
20 proceeding that was really had was the sentencing hearing with
21 the stipulation --

22 JUDGE SIPPEL: So at sentencing?

23 THE WITNESS: -- and I made a statement at that
24 time that I'm very sorry that this happened, and apologized.

25 JUDGE SIPPEL: It was on the record?

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1 THE WITNESS: I presume it was.

2 JUDGE SIPPEL: Do you have any evidence on that,
3 Mr. Jacobs?

4 MR. JACOBS: No, Your Honor.

5 JUDGE SIPPEL: We don't know he did it, then. We
6 really don't. We don't have a witness to it. I would think
7 it would be some kind of a sentencing there would be a
8 transcript of the sentencing procedure, proceeding.

9 MR. JACOBS: We never received any such
10 documentation. We have, which I will mention in my redirect,
11 a document which is the Judge's sentencing order. But nothing
12 more than that.

13 JUDGE SIPPEL: Well you see, my quandary is he is
14 telling me that he apologized at the time of his sentencing,
15 and there's no evidence of it other than his statement.

16 MR. JACOBS: Well, I think it's entitled to
17 credibility as his statement --

18 JUDGE SIPPEL: Well of course you are. I mean, I'm
19 not suggesting that you should support what I'm saying. I'm
20 just saying that I'm desperately looking for something to
21 corroborate what he said because what he said was very
22 important. I'm getting nothing out of this.

23 THE WITNESS: Your Honor, the Judge would not let
24 any victim statements be read or any witnesses at that. When
25 he gave the sentence, I think the lawyer said do you have

1 anything to say, Mike, and at that time I said I'm very sorry.

2 JUDGE SIPPEL: There must have been somebody taking
3 a transcript down, no?

4 THE WITNESS: I'm not aware of that. There may
5 have been.

6 JUDGE SIPPEL: Well there's too many subjunctives
7 here. Does anybody have the time?

8 MR. OSHINSKY: Your Honor, it's about 12:25.

9 JUDGE SIPPEL: Well, I think this is a good time
10 to break for lunch. Does anybody disagree with that?

11 MR. OSHINSKY: No, that's fine.

12 MR. JACOBS: Your Honor, do you think it would be
13 a violation of any rule if we attempt to reset that clock to
14 the correct time? It seems to be running but almost exactly
15 an hour --

16 JUDGE SIPPEL: Do you think this is something
17 devious that I did?

18 MR. JACOBS: No, I'm just wondering, you know, when
19 I first came to the Commission --

20 JUDGE SIPPEL: All right, let's go off the record.

21 (Whereupon, the above-entitled matter went off the
22 record at 12:25 p.m. and resumed at 12:27 p.m.)

23 JUDGE SIPPEL: You could talk to your lawyer about
24 anything but your testimony, what you're on the stand for, do
25 you understand that?

1 THE WITNESS: Okay.

2 JUDGE SIPPEL: Talk about birds or anything you
3 want to talk about. You can talk about the case but, I mean,
4 not your testimony.

5 MR. OSHINSKY: Your Honor, could you extend that
6 also to his expert witness?

7 JUDGE SIPPEL: How many experts do we have back
8 there?

9 MR. OSHINSKY: Two.

10 JUDGE SIPPEL: Just two?

11 DR. DUNCAN-HIVELY: Your Honor, I'm Dr. Duncan-
12 Hively. This is Dr. Wells Hively.

13 JUDGE SIPPEL: Okay, you will not --

14 DR. DUNCAN-HIVELY: We come from St. Louis to
15 attend your hearing.

16 JUDGE SIPPEL: Well thank you. No, I appreciate
17 this very much. I know this is really kind of a hardship for
18 you. But you understand my directive? You're not to talk to
19 counsel, or certainly not to talk to the witness about his
20 testimony at this point?

21 DR. DUNCAN-HIVELY: I understand, Your Honor, and
22 I'll follow your instruction.

23 JUDGE SIPPEL: Thank you very much. And you, sir?

24 DR. HIVELY: Of course.

25 JUDGE SIPPEL: Okay. Let's go get lunch. Okay?

1 (Whereupon, the above-entitled matter went off the
2 record at 12:28 p.m. and resumed at 1:39 p.m.)

3 JUDGE SIPPEL: Okay, we're back on the record. All
4 right, I am almost finished here. I want to go back again to
5 that -- You are under oath now, sir. You are under oath.

6 THE WITNESS: Yes, sir.

7 ADMIN. JUDGE SIPPEL: Okay. I wanted you to
8 understand that. And I am going to assume you have not spoken
9 with anybody about your testimony?

10 THE WITNESS: No.

11 JUDGE SIPPEL: Okay. Now I want to go back to that
12 empty glass again. In terms of your concern about marijuana,
13 I'm not going to say narcotics in general, I'll just say
14 marijuana, would your glass be full, half full, three-quarters
15 full?

16 THE WITNESS: If it was full -- I don't understand.

17 JUDGE SIPPEL: Well, you've got an empty glass.

18 THE WITNESS: Okay.

19 JUDGE SIPPEL: Fill it up, tell me where you want
20 to stop. How are your feelings about marijuana?

21 THE WITNESS: I don't like it at all.

22 JUDGE SIPPEL: Okay.

23 THE WITNESS: I don't want it in the house. I
24 don't want to be around people that use it.

25 JUDGE SIPPEL: Well, why not?

1 THE WITNESS: It's just me. I think it is harmful.

2 JUDGE SIPPEL: All right. So you are basically --
3 You are at the top of the glass, you're filling that up.

4 THE WITNESS: Oh, okay.

5 JUDGE SIPPEL: No, don't tell me it's okay, I am
6 asking you.

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: Could it be three-quarters and get
9 away with it?

10 (No audible response.)

11 JUDGE SIPPEL: Anybody ever -- Well, you said you
12 never let it in your house.

13 THE WITNESS: Right. Well, I guess with that
14 example it would be full, the glass.

15 JUDGE SIPPEL: Yes, that's what it sounds like.
16 Okay. And yet alcohol more or less gets a free ride, at least
17 back in that days, back in those days?

18 THE WITNESS: Correct.

19 JUDGE SIPPEL: You can bring as much in, you can
20 drink as much as you want?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: You don't feel that way today?

23 THE WITNESS: No.

24 JUDGE SIPPEL: Okay. I'm just curious about this,
25 because you and I aren't that far apart in age. You, back in

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1 1960, '58, how old were you in '58?

2 THE WITNESS: '68?

3 JUDGE SIPPEL: '58, 5-8.

4 THE WITNESS: Oh, in '58?

5 JUDGE SIPPEL: Yes.

6 THE WITNESS: It's -- I'm not good at math in my
7 head.

8 JUDGE SIPPEL: Okay. Let me see if I can help you.

9 THE WITNESS: I'm almost 76, so --

10 JUDGE SIPPEL: No, you wouldn't be 76, you would
11 have been about 18, 18 or 19?

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: Okay.

14 THE WITNESS: Well, I graduated in 1959 from high
15 school, that I do know.

16 JUDGE SIPPEL: Oh, '59.

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: Okay, okay, that's fine. So '60,
19 '61, '62, because I know, I experienced the Draft myself,
20 that's a historical day since they don't draft anymore, but
21 did you get a Draft notice? Did you get -- How did you manage
22 to either go in or out of the military? Did you serve? Did
23 you serve in the military?

24 THE WITNESS: No.

25 JUDGE SIPPEL: Okay. How did that happen that you

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1 didn't serve?

2 THE WITNESS: I was disqualified for a medical
3 reason.

4 JUDGE SIPPEL: What was the medical reason?

5 THE WITNESS: I believe that it was high blood
6 pressure.

7 JUDGE SIPPEL: You were pretty young to have high
8 blood pressure. You're lucky you survived this long. That's
9 quite a --

10 THE WITNESS: Well, I've had one heart attack.

11 JUDGE SIPPEL: Yes.

12 THE WITNESS: And I was classified, I remember this
13 one why --

14 JUDGE SIPPEL: What does that mean?

15 THE WITNESS: -- and that meant that they could
16 extend, put me in some sort of military service until age 30
17 or 35, but I wasn't on the bus to go to training.

18 JUDGE SIPPEL: Yes.

19 THE WITNESS: That's what I understand.

20 JUDGE SIPPEL: So you still had to roll the dice
21 until you were 30 years old?

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: Okay. And they never bothered you,
24 never called you?

25 THE WITNESS: No.

1 JUDGE SIPPEL: Had you ever got mixed up in that,
2 what was that, like an auction or whatever the heck that thing
3 was when they put the little balls in --

4 THE WITNESS: I remember that, yes.

5 JUDGE SIPPEL: What was that called?

6 MR. JACOBS: The lottery.

7 JUDGE SIPPEL: The lottery.

8 THE WITNESS: No.

9 JUDGE SIPPEL: Okay. Your witness, Mr. Oshinsky.

10 MR. OSHINSKY: Thank you, Your Honor.

11 CROSS EXAMINATION

12 MR. OSHINSKY: Mr. Rice, my last question to you
13 was that you groomed your victims in preparation for sexual
14 encounters, correct, and your answer to me was yes, is that
15 correct?

16 THE WITNESS: From what I know now, yes.

17 MR. OSHINSKY: Okay. And looking at your
18 deposition on page 98, Line 11, and I will read from the
19 deposition when everybody is ready.

20 JUDGE SIPPEL: Let counsel know when you got the
21 spot.

22 MR. OSHINSKY: Are you ready, Your Honor?

23 JUDGE SIPPEL: I'm ready.

24 MR. OSHINSKY: Okay.

25 JUDGE SIPPEL: What is the line?

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1 MR. OSHINSKY: Line 11. Question: My question
2 again is were you ever told that any of the actions you
3 performed with these children could be characterized as
4 grooming? Answer: Yes. Okay, which ones? Answer: Well, all
5 of them. Having them come over to the home, you know, letting
6 them smoke in here. Do you remember telling me that?

7 THE WITNESS: Yes.

8 BY MR. OSHINSKY:

9 Q Now you gave the children alcohol, allowed them to
10 get drunk to the point of where some of them passed out and
11 then you had sex with them, is that correct?

12 A No.

13 Q Are you aware there is evidence in the record that
14 shows that is exactly what happened?

15 A That I gave them alcohol?

16 Q Yes.

17 A I am not aware of that.

18 Q And also there is evidence that you brought
19 marijuana to these children and got them high and then had sex
20 with them, is that correct?

21 A No.

22 Q There is also evidence that shows you showed the
23 children pornographic movies and then had sex with them, is
24 that correct?

25 A No.

1 MR. JACOBS: Your Honor, reference is being made
2 to evidence in the record but I have no idea --

3 MR. OSHINSKY: Well I'm about to -- I'll clear that
4 up for you, and before I do I will ask this last question.
5 You accused some of these children about lying about the
6 circumstances surrounding the sexual encounters, is that
7 correct?

8 THE WITNESS: Yes.

9 MR. OSHINSKY: Okay. So I would ask everybody to
10 look at EB Direct Exhibit 4, Pages 12 through 13.

11 THE WITNESS: Twelve -- What pages was that?

12 MR. OSHINSKY: Yes, it's entitled August Parole
13 Hearing Report.

14 JUDGE SIPPEL: Yes, what page is that?

15 MR. OSHINSKY: It's EB Exhibit 4, Pages 12 through
16 13.

17 JUDGE SIPPEL: Oh, I see what you are saying.

18 MR. OSHINSKY: Do you --

19 JUDGE SIPPEL: Wait just a second. Do you have --

20 MR. OSHINSKY: Mr. Rice, you have access to that,
21 is that correct?

22 JUDGE SIPPEL: This big book right here.

23 THE WITNESS: Is it toward the back here?

24 JUDGE SIPPEL: No, no, this --

25 MR. OSHINSKY: No, it's in the big binder. It's

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1 EB Exhibit 4, Direct Case Exhibits, and then Pages 12 to 13.

2 JUDGE SIPPEL: From here, and then Pages 12 to 13.

3 MR. OSHINSKY: I'll give you a minute to, everybody
4 a minute to read through that.

5 JUDGE SIPPEL: Okay. We can go off the record.

6 (Whereupon, the above-entitled matter went off the
7 record at 1:48 p.m. and resumed at 1:54 p.m.)

8 JUDGE SIPPEL: We're back on the record.

9 MR. OSHINSKY: Thank you, Your Honor. Would you
10 agree with me, Mr. Rice, that based on the information in
11 those records your answers to all of my questions should have
12 been yes, correct, my last three questions?

13 THE WITNESS: What were they?

14 BY MR. OSHINSKY:

15 Q That you gave children alcohol, got them drunk to
16 the point where some of them passed out and then you had sex
17 with them, correct?

18 A I did not give them liquor.

19 Q Did they drink until they passed out and then you
20 had sex with them?

21 A I don't recall any of them passed out.

22 Q You don't recall it or are you saying it didn't
23 happen?

24 A I don't recall it.

25 Q But it could have happened? Is that your testimony

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1 it could have happened, you just don't recall?

2 A I just don't recall.

3 JUDGE SIPPEL: That's not what counsel's question
4 was. Why don't you repeat it?

5 MR. OSHINSKY: I said your answer is that it could
6 have happened but you don't recall?

7 THE WITNESS: Highly unlikely, but I don't recall,
8 so I can't --

9 MR. OSHINSKY: You can't say categorically that it
10 didn't happen.

11 THE WITNESS: It's been so long ago that I can't
12 remember.

13 MR. OSHINSKY: But the information you just read
14 indicates that it did happen, doesn't it?

15 MR. JACOBS: I object.

16 JUDGE SIPPEL: What's the basis for your objection?

17 MR. JACOBS: This whole line of questioning.
18 Counsel has pointed out that what he is referring to is a part
19 of the Bureau's Exhibit 4, which is a series of documents from
20 the Missouri Department of Corrections.

21 Those documents are supposedly being offered as
22 business records of the Department of Corrections and,
23 therefore, are exempt from the hearsay rule, and not being
24 sought admission for the truth of what they say, but it's
25 quite clear that Mr. Oshinsky is trying to use that document

1 to prove the truth of what it says.

2 It is a parole hearing report by some person named
3 Matt Kimsey, K-I-M-S-E-Y, Matt Kimsey. It has never been
4 admitted into evidence at any proceeding.

5 JUDGE SIPPEL: All right. The objection is
6 overruled. It doesn't have to be, this is cross examination.
7 All he is doing is to put the document in front him, he's not
8 asking him to identify and offer it into evidence. He is
9 simply putting a document in front of him and asking him the
10 questions.

11 MR. OSHINSKY: Thank you, Your Honor.

12 JUDGE SIPPEL: Yes, no, I don't know. I mean it's
13 easy.

14 MR. JACOBS: But he asked us to assume that it was
15 an authentic statement.

16 JUDGE SIPPEL: No, he didn't. I didn't hear it.
17 I didn't hear it.

18 MR. JACOBS: He said there is evidence in this
19 proceeding.

20 JUDGE SIPPEL: Well --

21 MR. JACOBS: There is no evidence in this
22 proceeding.

23 MR. OSHINSKY: I said there is evidence in the
24 record.

25 MR. JACOBS: It's not in the record --

1 (Simultaneous speaking.)

2 MR. OSHINSKY: I'm not talking about legally
3 admitted evidence, I just said evidence. I could have used
4 "information," there is information in the record.

5 JUDGE SIPPEL: Yes, it's --

6 MR. JACOBS: It's not in the record.

7 JUDGE SIPPEL: This is going nowhere. The
8 objection is overruled.

9 MR. OSHINSKY: Thank you, Your Honor. And the
10 answer to you brought marijuana to these children, got them
11 high, and then had sex with them, correct, that should have
12 been yes as well, is that correct?

13 THE WITNESS: That I gave them marijuana?

14 BY MR. OSHINSKY:

15 Q Yes.

16 A The answer to that is no.

17 Q And that you showed these children pornographic
18 movies and then had sex with them?

19 A No.

20 Q So if the children are reporting this then you are
21 saying that they are lying about the circumstances, is that
22 correct?

23 A Yes.

24 Q Do you have any knowledge about why they would be
25 lying, to do that? Actually, Your Honor, I withdraw that

1 question. I'll let his answer stand.

2 Now, Mr. Rice, you promised these children, or some
3 of the children, jobs in radio, that you would get them a job
4 as a DJ, is that correct?

5 A No.

6 MR. OSHINSKY: So, Your Honor, I would direct the
7 Court's attention to EB Direct Exhibit 4, actually at the same
8 pages that you just were at. No, that isn't it. I'm sorry,
9 Pages 18 to 21, excuse me.

10 JUDGE SIPPEL: Eighteen to what is that?

11 MR. OSHINSKY: Eighteen to 21. I am going to try
12 to -- Actually, the most direct notation that I see here is
13 on Page 21 about the middle of the page.

14 JUDGE SIPPEL: Okay.

15 MR. OSHINSKY: Again, this is the same report.

16 JUDGE SIPPEL: This is Exhibit 4 for
17 identification, Mr. Jacobs, if that makes it easier.

18 MR. OSHINSKY: Correct.

19 JUDGE SIPPEL: That's a Bureau Exhibit 4.

20 MR. OSHINSKY: Yes, Bureau Exhibit 4, about the
21 middle of the page on Page 21.

22 JUDGE SIPPEL: On 21?

23 MR. OSHINSKY: Yes.

24 JUDGE SIPPEL: Okay. Let us know when you get to
25 it.

1 MR. OSHINSKY: I can actually read it, it's short.

2 JUDGE SIPPEL: Go right ahead.

3 MR. OSHINSKY: At the beginning the children were
4 looking for friendship and emotional support. Rice promised
5 several that they could have futures in radio as disc jockeys,
6 told them that he could get them good jobs later when they got
7 older. Some of the young boys were just looking for fun.

8 Does that inform your recollection, Mr. Rice?

9 THE WITNESS: I didn't promise anyone jobs. They
10 were way too young and we had no radio stations in that area.

11 JUDGE SIPPEL: Well this statement says when they
12 get older, later when they get older.

13 MR. OSHINSKY: But you did tell them that you were
14 in radio, isn't that correct?

15 THE WITNESS: Yes.

16 MR. OSHINSKY: And did they admire you because of
17 the fact that you were making a living in radio?

18 THE WITNESS: I would assume so, yes.

19 MR. JACOBS: Your Honor, again, I object to any use
20 being made of this report from Detective Joel Fann, which is
21 hearsay and has not been admitted into evidence.

22 So asking our client to say whether some statements
23 in a hearsay document are true or false to me --

24 (Simultaneous speaking.)

25 MR. OSHINSKY: Counsel, what if I showed him a

1 photograph, would you object to that not being in evidence if
2 I hadn't moved it in? The Bureau has not moved these in yet,
3 but I am asking him to read it, that's all.

4 MR. JACOBS: My point is that Detective Fann's
5 statement as far as I am concerned is worthless.

6 JUDGE SIPPEL: Well, okay, now why don't we clear
7 this up. Why don't you offer Exhibit 4 into evidence.

8 MR. OSHINSKY: You want to do that now, Your Honor?

9 JUDGE SIPPEL: Sure, go ahead.

10 MR. OSHINSKY: Okay.

11 JUDGE SIPPEL: Lay the foundation and make your
12 motion.

13 MR. OSHINSKY: All right. Your Honor, I return the
14 Court's attention to Exhibit 5, EB Exhibit 5, and it's
15 entitled Declaration Regarding Business Records of the
16 Missouri Department of Corrections.

17 JUDGE SIPPEL: I see it. You got it, Mr. Jacobs?
18 You got that?

19 MR. JACOBS: What about it?

20 JUDGE SIPPEL: The page he is talking about?

21 MR. JACOBS: I am aware of it.

22 JUDGE SIPPEL: Okay.

23 MR. OSHINSKY: So, Your Honor, the Bureau would
24 move the admission of these records as part of exception to
25 the hearsay rule, Federal Rules of Evidence 8038, business

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1 records of the Missouri Department of Corrections.

2 JUDGE SIPPEL: Which are kept in the regular course
3 of business?

4 MR. OSHINSKY: Right, yes. This is a declaration
5 that's kept in the ordinary course of business.

6 JUDGE SIPPEL: Is there any objection to that?

7 MR. JACOBS: I have a general objection.

8 JUDGE SIPPEL: Well, give me a specific objection.

9 MR. JACOBS: If they are only being admitted as
10 business records I have no specific objection except that one
11 of them is essentially illegible, and I'll tell you in a
12 second.

13 JUDGE SIPPEL: Well, the motion is granted, it's
14 in evidence.

15 (Whereupon, the above-referred to document was
16 received into evidence as EB Exhibit No. 4.)

17 JUDGE SIPPEL: Now let's clear up that page.

18 MR. JACOBS: It's not a page, it's a whole report.
19 The MOSOP Participation and Examination Report at Pages 7
20 through 10 is essentially illegible.

21 JUDGE SIPPEL: Is that part of Exhibit 4?

22 MR. JACOBS: Yes.

23 JUDGE SIPPEL: I think I remember -- I know what
24 you are talking about. I think I had the same --

25 MR. JACOBS: Seven through 10.

1 JUDGE SIPPEL: Let's hear it from you, Mr.
2 Oshinsky.

3 MR. KNOWLES-KELLETT: Your Honor, a couple of
4 points. One is that we are offering them as an exception to
5 the hearsay rule in the coming, for the truth of the matter
6 asserted, so we want to be very clear on that. We are not
7 just offering them for any limited purpose.

8 JUDGE SIPPEL: I understand that.

9 MR. KNOWLES-KELLETT: Okay. Second --

10 JUDGE SIPPEL: But I don't -- My ruling doesn't
11 necessarily come to that conclusion, you know.

12 MR. KNOWLES-KELLETT: You understand -- You give
13 them the weight, I appreciate that you are going to give them
14 the weight, but we are offering them under the exception to
15 the hearsay rule where we are offering them for the truth of
16 the matter asserted, whether you both find them sufficiently
17 reliable I understand.

18 JUDGE SIPPEL: Okay, all right.

19 MR. KNOWLES-KELLETT: The second part is with
20 respect to the illegible document --

21 JUDGE SIPPEL: Yes?

22 MR. KNOWLES-KELLETT: Your Honor will recall we
23 issued a subpoena to the Missouri Department of Corrections
24 and the response to the subpoena is this is the -- they pulled
25 the file from archives and this is the best copy available.

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1 So we are not offering -- and we have witnesses
2 that are familiar with these MOSOP reports coming for the next
3 two days and if you have trouble reading it to this they have
4 insights into what is being said because they are familiar
5 with documents of this type.

6 MR. OSHINSKY: I'd also note, Your Honor, that they
7 are offering a certificate from this program into evidence,
8 that's part of the Lake direct case exhibits, so it's an
9 important document. This document that Mr. Jacobs is
10 mentioning is only partially illegible.

11 One of our expert witnesses is able to discern
12 certain information and, actually, if you look at it you can
13 see a number of items in there that are quite significant
14 since Lake is relying on the MOSOP program so heavily.

15 MR. JACOBS: I'm sorry, Your Honor, if the Bureau
16 had any sense of propriety here they would know that the only
17 way they can present something like this is for them to have
18 one of their experts literally --

19 MR. OSHINSKY: That is exactly what's going to
20 happen.

21 MR. JACOBS: -- type out the entire pages so that
22 we know what these documents say.

23 MR. OSHINSKY: This is the best evidence, Your
24 Honor, that is available at this time.

25 JUDGE SIPPEL: You are going to clear up the record

1 in other words before you finish?

2 MR. OSHINSKY: Yes. Dr. Weitl should be able to
3 clarify.

4 JUDGE SIPPEL: All right, okay. Well, I am not
5 particularly happy with that because that should have been
6 cleared up before you assembled your case in chief, but let's
7 -- I'm going to just let it rest and we'll see what happens.
8 We'll see what happens. We got a witness coming in. Okay?
9 Your objection is still pending.

10 MR. JACOBS: It's --

11 MR. OSHINSKY: Your Honor, I would note that Mr.
12 Jacobs did not object to this record on the basis of
13 illegibility.

14 MR. JACOBS: That's not true.

15 MR. OSHINSKY: There are notations in the report --
16 (Simultaneous speaking.)

17 MR. KNOWLES-KELLETT: I've got your objections to
18 exhibits.

19 MR. OSHINSKY: -- which are highly probative.

20 MR. JACOBS: The Bureau has had this exhibit in its
21 possession since July 15, 2015, and at that time they sent it
22 to us and --

23 JUDGE SIPPEL: They who? Being who, they?

24 MR. JACOBS: The Bureau.

25 JUDGE SIPPEL: Okay.

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1 MR. JACOBS: As part of Discovery, and I pointed
2 out the problem. They said they would look into it as they
3 indicated they have, but they were not able to produce a
4 better version. And now they say, 2-1/2 years later, sorry,
5 two years later, they are going to perhaps produce someone who
6 can decipher the pages.

7 JUDGE SIPPEL: Right.

8 MR. JACOBS: Yet this is potentially an important
9 document and they have just been sitting on it.

10 MR. OSHINSKY: Your Honor, I object to that
11 characterization. It's completely untrue. The document --
12 Your Honor can give the document the weight that you feel it
13 deserves.

14 JUDGE SIPPEL: Well, I'm going to wait until, or
15 wait, I am going to W-A-I-T until all your testimony on this
16 is finished and then I will make a decision.

17 But, Mr. Jacobs, I am very -- I am curious about
18 this. You have had that document since 2015.

19 MR. JACOBS: Right.

20 JUDGE SIPPEL: Did you make any efforts to get a
21 clean copy from the Department of Corrections?

22 MR. JACOBS: No, because the Bureau said that it
23 was doing it.

24 JUDGE SIPPEL: Well wouldn't it be interesting to
25 know what was going on, just in trial preparation?

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1 MR. JACOBS: I don't want to get into how many
2 times I have asked the Bureau for updates on things and have
3 gotten nothing.

4 Onto the question of whether I objected to the
5 illegibility, if you look at our objections to Direct Case
6 Exhibits dated April 21, 2017, in the last paragraph it says:
7 Moreover, a number of the pages are partially illegible and,
8 therefore, are unacceptable on that basis alone.

9 JUDGE SIPPEL: Okay.

10 MR. KNOWLES-KELLETT: And you are correct. I stand
11 corrected on that date, Your Honor.

12 JUDGE SIPPEL: Okay, April 21. All right.

13 MR. OSHINSKY: But, Your Honor, again, it goes to
14 the weight of the document.

15 JUDGE SIPPEL: I don't want to get instruction.
16 I simply want -- I'm trying to just make the rulings. The
17 rulings is that the document is received in evidence, Exhibit
18 4, with the exception of those pages that you are talking
19 about that are --

20 MR. OSHINSKY: Yes, they're --

21 JUDGE SIPPEL: -- not decipherable right now --

22 MR. OSHINSKY: Right.

23 JUDGE SIPPEL: -- until you have your witness on.

24 MR. OSHINSKY: Yes, they're not really at issue at
25 this point.

1 JUDGE SIPPEL: That's exactly right. We wait until
2 there is testimony about it.

3 MR. OSHINSKY: Right.

4 JUDGE SIPPEL: And, you know, you might not win
5 this motion, so I want you to know I am going into this with
6 an open mind. Okay, so it was April -- I'm sorry, what was
7 the date of your motion?

8 MR. JACOBS: April 21.

9 MR. OSHINSKY: Thank you, Your Honor.

10 JUDGE SIPPEL: Okay.

11 MR. OSHINSKY: Okay, now we have to --

12 JUDGE SIPPEL: Okay, we're finished with that.

13 MR. OSHINSKY: Yes.

14 JUDGE SIPPEL: For now.

15 MR. OSHINSKY: Okay. So I had actually just read
16 a section of one of the records into the testimony and I asked
17 Mr. Rice if he would like to change his testimony after
18 reading that and your answer was?

19 THE WITNESS: Reading what?

20 MR. OSHINSKY: Reading the section about having
21 offered these children, or at least some of them, jobs in
22 radio as DJ or in the future.

23 THE WITNESS: I didn't offer them jobs.

24 MR. OSHINSKY: At the time of the --

25 JUDGE SIPPEL: Wait a second, Mr. Oshinsky.

1 MR. OSHINSKY: Sure, I'm sorry.

2 JUDGE SIPPEL: You know, maybe you didn't offer
3 them jobs, but did you kind of hold it out there as a hope or
4 a dream? Say, well, you know, maybe someday --

5 THE WITNESS: I don't think that anybody that came
6 over to the house was interested in being in or on radio in
7 any capacity.

8 JUDGE SIPPEL: They were or were not?

9 THE WITNESS: Were not.

10 JUDGE SIPPEL: Are you sure? Did you ask them
11 that?

12 THE WITNESS: No, but we never really talked about
13 careers in radio, nor was I asked.

14 JUDGE SIPPEL: Well, if I had teenagers coming as
15 company into my house I would ask them, I would say, you know,
16 did you ever think about being a lawyer. You wouldn't do that
17 though?

18 THE WITNESS: No.

19 JUDGE SIPPEL: I don't mean a lawyer, I mean --

20 THE WITNESS: Right, I understand.

21 JUDGE SIPPEL: Okay. Okay, I'm sorry, go ahead,
22 Mr. Oshinsky.

23 MR. OSHINSKY: Now at the time of the crimes you
24 owned radio stations which had transmitter buildings, correct?

25 THE WITNESS: All of them did, yes.

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1 BY MR. OSHINSKY:

2 Q And you told me actually that you had built those
3 radio stations and those transmitter stations from scratch,
4 is that correct?

5 A Most of them.

6 Q A transmitter building is where the radio tower is
7 housed, is that correct?

8 A Correct.

9 Q One of the victims in this case was the child of
10 your neighbor, is that correct?

11 A Yes.

12 Q And that's the individual we are referring to know
13 as C.Z.?

14 A Yes.

15 Q This child was 11 years old at the time you started
16 molesting him, correct?

17 A No.

18 Q Are you aware that this victim has claimed that he
19 was 11 years old at the time he began his relationship with
20 you, his sexual relationship?

21 A No.

22 MR. OSHINSKY: Your Honor, just a moments
23 indulgence. Your Honor, there is a notation in the record
24 here that this victim was 11 years old. Unfortunately, I
25 haven't marked it very well, so I am going to ask Mr. Knowles-

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1 Kellett to continue looking for it.

2 JUDGE SIPPEL: I'm sorry, I didn't hear?

3 MR. OSHINSKY: I'll ask Mr. Knowles-Kellett to look
4 for that reference and I will move on.

5 JUDGE SIPPEL: Go right ahead, it's all right.
6 What's the date of this Exhibit 4? Is that March 19, 1999?
7 No, that's the MOSOP participation --

8 MR. JACOBS: There are various dates because there
9 are a whole slew of reports in there.

10 JUDGE SIPPEL: All right, I got you. I see the
11 MOSOP and -- Well, there is some -- Never mind. This one is
12 August 9, 1996, is that right?

13 MR. OSHINSKY: Yes, Your Honor, I think.

14 JUDGE SIPPEL: August Parole Hearing Report?

15 MR. OSHINSKY: Correct.

16 JUDGE SIPPEL: Okay. Did you -- At the time the
17 report was published did you get a copy of it?

18 THE WITNESS: Which?

19 JUDGE SIPPEL: The one in August, the one we were
20 talking about. Look at your book at Exhibit 4, that was done
21 in August 9, 1996. Well, that's the date it was typed. It
22 was dictated in July of that year.

23 MR. OSHINSKY: Your Honor, actually we found it.
24 It's about midway down on Page 12.

25 JUDGE SIPPEL: All right. Well let me ask the

1 witness my questions first. Did you see a copy of that report
2 in 1996?

3 THE WITNESS: I don't recall.

4 JUDGE SIPPEL: You don't recall something like
5 this?

6 THE WITNESS: This is before the trial.

7 JUDGE SIPPEL: I believe that's true.

8 THE WITNESS: Is that true, okay.

9 JUDGE SIPPEL: I believe it is, I don't know. You
10 know the dates better than I do, or you should. Are you
11 looking for something? Are you trying to formulate an answer
12 or --

13 THE WITNESS: No, I'm trying to look for the
14 context.

15 MR. JACOBS: Your Honor, again, to clarify --

16 JUDGE SIPPEL: No, no, don't interrupt me. The
17 contents is what you have been testifying to for the last half
18 hour. It's -- I got a Page 11 and it says Missouri Department
19 of Corrections.

20 THE WITNESS: I am on the wrong page here.

21 JUDGE SIPPEL: Well, as the saying goes we all have
22 to be on the same page.

23 THE WITNESS: Okay, Page 11, Exhibit 4.

24 JUDGE SIPPEL: Right.

25 THE WITNESS: Okay.

1 JUDGE SIPPEL: See, it's the --

2 MR. OSHINSKY: It's Page 12, actually.

3 JUDGE SIPPEL: No, mine says 11. I might not have

4 --

5 MR. OSHINSKY: Oh, okay, I'm sorry, excuse me.

6 JUDGE SIPPEL: And it says the date it was dictated
7 is July '96 and that it was typed in August '96. Okay? You
8 are nodding yes.

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: And my question to you is, at any
11 time in 1996 were you given a copy of this report or were you
12 to read or --

13 THE WITNESS: I don't believe so. Perhaps an
14 attorney was given a copy.

15 JUDGE SIPPEL: Well, that's a horrible answer.

16 THE WITNESS: Yes, it is.

17 JUDGE SIPPEL: This is like -- This is almost like
18 Melville didn't proofread Moby Dick or something. I mean this
19 is a big deal, it's your life.

20 THE WITNESS: Yes, it's a big deal and I take it
21 very seriously, Your Honor.

22 JUDGE SIPPEL: Oh, but you can't answer my
23 question. I am not even asking for a specific day. I want
24 to know at what point in time on the calendar did you have
25 this in your possession where you could read it, not

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1 necessarily the date certain. At least keep it in years.

2 THE WITNESS: I don't recall having this in my
3 possession, but it's been so long ago I really can't remember.
4 I didn't save documents like this.

5 JUDGE SIPPEL: Well, it's not a keepsake, you know.

6 MR. JACOBS: Your Honor, again, I need to remind
7 everyone that Mr. Rice went to prison on September 30, 1994.

8 JUDGE SIPPEL: Right.

9 MR. JACOBS: Two years before this document was
10 created.

11 JUDGE SIPPEL: Correct.

12 MR. JACOBS: Now I have never been in prison so I
13 don't know what the day-to-day routine is, but I would not be
14 surprised if the Board of Parole would not give me copies of
15 documents if I was --

16 JUDGE SIPPEL: Wait a minute, of a parole report
17 regarding your -- I mean this is a parole report, is that
18 right? Is that what it is?

19 MR. OSHINSKY: It says Parole Hearing Report.

20 JUDGE SIPPEL: All right. Now, and you say that
21 the incarcerated witness or person is not going to ever be
22 able to see this report?

23 MR. JACOBS: Maybe not.

24 JUDGE SIPPEL: Well, yes, but everybody is calling
25 maybe and I can't remember, this is -- What is the first time

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1 you remember seeing this report?

2 THE WITNESS: I don't even recall that.

3 JUDGE SIPPEL: Well, you're seeing it now.

4 THE WITNESS: Yes, I am seeing it now.

5 JUDGE SIPPEL: Did you ever see it before?

6 THE WITNESS: I don't think so. This was done when
7 I was at the correctional place.

8 JUDGE SIPPEL: I see that. So it's possible that
9 you don't have a recollection of those things that were
10 written down but those things that were written down in this
11 exhibit may have been accurate -- if you have never read it
12 until now and you are having a difficult time recalling those
13 events because it was a long time ago?

14 (No audible response.)

15 JUDGE SIPPEL: Could you answer my question?

16 THE WITNESS: Your question is when did I see this?

17 JUDGE SIPPEL: I am asking you perhaps the
18 information in Exhibit 4 that you disagree with might be
19 accurate because it was 20-some odd years ago, probably even
20 longer than that, 30 years almost, and you don't recall
21 reading this at any time before this case came, till now,
22 today, I guess it's the only thing I can pin you down on, and
23 so when it was written back in '96 it may have -- You don't
24 have any recollection of the accuracy of this stuff because
25 you said you can't remember anything back then?

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1 THE WITNESS: No, but I could read it and --

2 JUDGE SIPPEL: I know you can read it.

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: But how do you -- If you don't --
5 If it's written back in '96 and you didn't read it in '96,
6 '97, '98, when you would have been fresh in your mind, how do
7 you know sitting down here today that Exhibit 4 is not
8 accurate?

9 It's not accurate, but it could be accurate. Based
10 on your prior testimony you don't remember anything back that
11 far. It's specific, you can't remember anything specific.

12 THE WITNESS: I guess I -- I can remember some
13 things about in prison and the parole hearings and things like
14 that.

15 JUDGE SIPPEL: I am not asking you about those.

16 THE WITNESS: But that's when this was written,
17 during that period of time.

18 JUDGE SIPPEL: Yes, that's what I am asking you
19 about this document.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: And I am asking you did you have a
22 chance to read this ever about that time. I'm not even sure
23 what your answer is. '94, '95, '96?

24 THE WITNESS: I just don't recall so I don't want
25 to give an answer that --

1 JUDGE SIPPEL: That's all right, you don't recall.

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: Did you -- What about your lawyer,
4 were you being represented by a lawyer during this?

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: So, let's -- I'm going to -- Well,
7 I'm not going to assume anything. Okay. That finished --
8 That's it for me.

9 MR. OSHINSKY: Your Honor, so the statement, the
10 information I am pointing to in the record reads: According
11 to the Victim Impact Statement dated 08/15/94 one victim
12 stated that while he is now 19 years old he was only 11 at the
13 time Rice sexually molested him.

14 JUDGE SIPPEL: Now what page is that?

15 MR. OSHINSKY: That is Page 12 about midway down
16 the page.

17 JUDGE SIPPEL: Of Exhibit 4?

18 MR. OSHINSKY: Of Exhibit 4, Your Honor.

19 JUDGE SIPPEL: I see. I see exactly where you are.

20 MR. OSHINSKY: Now, Mr. Rice, do you see that on
21 Page 12?

22 THE WITNESS: Is that about halfway down?

23 MR. OSHINSKY: Yes.

24 JUDGE SIPPEL: Yes, sir.

25 THE WITNESS: Okay. I see that now.

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1 MR. OSHINSKY: Okay. And does that refresh your
2 recollection that this child was only 11 years old?

3 THE WITNESS: No, I don't think there was anyone
4 ever in the house 11 years old. They were all adolescents.

5 BY MR. OSHINSKY:

6 Q But you told me at your deposition you really
7 didn't know how old the children were, did you?

8 A No, just by physical appearance you can guess.

9 Q So he could have been 11 years old, isn't that
10 true?

11 A Probably not.

12 Q But he could have been?

13 A No.

14 Q Why not?

15 A Because I just never wanted people that age in the
16 house.

17 Q But you didn't know how old he was, perhaps he
18 looked older. Did he look older than 11?

19 A I am not sure I know which person this is.

20 Q Well, this is C.Z.

21 A Oh, okay, that was the neighbor.

22 Q Yes.

23 A Okay.

24 Q Your neighbor's son.

25 A Yes.

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1 Q And you told me at your deposition that you had a
2 long sexual relationship with him, lasting years.

3 A Correct.

4 Q So he could well have been 11 years old when you
5 began, isn't that true?

6 A I don't believe so.

7 Q But it could have been?

8 A No. You're putting words in my mouth.

9 Q I am asking you is it possible. Did you see his
10 birth certificate?

11 A No, I didn't the give birth certificates --

12 Q And he was too young to have a driver's license,
13 correct?

14 A Yes.

15 Q Okay. So the truth is you never saw any evidence
16 of his age one way or the other except his appearance, isn't
17 that true?

18 A Yes.

19 Q Okay. So he could have been 11 years old, isn't
20 that true?

21 A I don't think I knew him when he was 11, but that's
22 --

23 Q So your answer is, yes, it could have been, right?
24 (No audible response.)

25 MR. OSHINSKY: Okay, so let me point out to you the

1 answer you gave me in your deposition at Page 61, Line 8.

2 JUDGE SIPPEL: Page what?

3 MR. OSHINSKY: That's at the beginning of Line 5
4 on Page 61.

5 JUDGE SIPPEL: Okay.

6 MR. OSHINSKY: And I can read it whenever you are
7 ready. Are you ready? Are you at page 61 of the exhibit?

8 THE WITNESS: Yes. Yes, I've read it.

9 BY MR. OSHINSKY:

10 Q The question was: But, Mr. Rice, do you know for
11 a fact that the victim was not age 11 in October 1988, isn't
12 that something that's easily provable? Answer: I didn't know
13 his age, but I didn't think he was 11 when he came over
14 because we never had anyone that young over. That was your
15 answer, right?

16 A Yes. And it's still my answer today.

17 Q But that also goes with the answer he could have
18 been 11 years old, isn't that true? It's possible that he was
19 11?

20 A Well, it's possible. He could have nine, I'm not
21 sure.

22 Q Okay, you're answer is it's possible then?

23 A Yes.

24 MR. OSHINSKY: Okay. Thank you.

25 JUDGE SIPPEL: Did you ever ask him what grade he

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1 was in in school?

2 THE WITNESS: He was in junior high school when he
3 started coming over.

4 JUDGE SIPPEL: Well, that would make him more than
5 11.

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: So -- Okay, I'll take that answer,
8 but you did testify, I asked you a question straight on and
9 you said that the ages of these young people was from 16 years
10 old down to 13, you told me that.

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: And that's only a two year
13 difference between 13 and 11, so why, how can you be so sure
14 when you're not so sure of anything, much anything else, how
15 can you be so sure that he wasn't 11?

16 THE WITNESS: I don't think there was 11 year olds
17 in the junior high school, but that's just an assumption on
18 my part, Your Honor.

19 JUDGE SIPPEL: Now you're sure that he was in
20 junior high school the first time that you had him in your
21 house, are you sure of that?

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: That's his answer.

24 MR. OSHINSKY: Thank you, Your Honor. Now as you
25 testified you had sex with this particular child, C.Z., over

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1 a number of years, correct?

2 THE WITNESS: Yes.

3 BY MR. OSHINSKY:

4 Q And you would drive him around in your red
5 Corvette, correct?

6 A Sometimes.

7 Q And on one of the days he came to you and asked you
8 for a ride to his grandmother's house, is that correct?

9 A No. I don't recall that at all.

10 Q And my question is he asked for a ride to his
11 grandmother's house but instead you took him to one of the
12 transmitter buildings and tried to have sex with him, is that
13 correct?

14 A No.

15 Q Are you aware that there is information in the
16 record that says that the victim claims you tried to have sex
17 with him in a transmitter building that you owned?

18 A Yes, I believe I have seen that.

19 Q You have seen it, okay. So I will refer just so
20 the Court has a notation, it's EB, again, EB Exhibit 4 at Page
21 29. And you drove with him to the transmitter building, is
22 that correct?

23 A I really can't -- I mean that whole period in my
24 life is kind of a haze and I can't remember specific things
25 from 27 years ago, I'm sorry.

1 Q But it's possible then that you did drive him to
2 the transmitter building?

3 A C.Z.?

4 Q Yes.

5 A Yes.

6 Q And is it possible that you also tried to have sex
7 with him there at the transmitter building?

8 A No.

9 Q And how do you remember that so specifically if you
10 took him there and your memory is so bad as you just
11 testified.

12 A Yes.

13 Q How do you know that you didn't have a --

14 A The only time that we had sex was at my house.

15 Q And you are absolutely certain of that?

16 A Yes.

17 JUDGE SIPPEL: Well how can you be so certain if
18 you can't recall there, that it was too long ago? I mean if
19 you got foggy recollection it's a foggy recollection for
20 everything.

21 (No audible response.)

22 JUDGE SIPPEL: All right, let's keep going.

23 Let's keep going. You got much more?

24 MR. OSHINSKY: One of your -- Yes, I do. Well, I
25 have a bit more, yes, Your Honor.

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1 JUDGE SIPPEL: Okay. Is there anybody here that
2 is going to be testifying that we are not going to get to?

3 MR. JACOBS: Well Dr. Duncan is here. We were
4 hoping we would at least begin with her testimony today, but
5 if not she'll be here tomorrow.

6 MR. OSHINSKY: We have made some arrangements with
7 our witness in Missouri just in the event that Dr. Duncan
8 didn't finish her testimony today.

9 JUDGE SIPPEL: So what I am saying is for the sake
10 of Dr. Duncan maybe she'll want to do something else than sit
11 here and listen to this, maybe she wants to listen to this.
12 Like we're going to just hold her up all afternoon? I mean
13 I'm not trying to browbeat you, I'm just curious about an
14 answer.

15 DR. DUNCAN-HIVELY: Your Honor, it would be fine
16 with me if I can be on call, we are staying not very far away,
17 if that would be reasonable. I don't know how long -- this
18 is the first one of these that I have, so I don't know how
19 long they last, so --

20 JUDGE SIPPEL: It's like a baseball game, you never
21 know.

22 MR. OSHINSKY: Well, Your Honor, unless -- At the
23 pace we are going I would say that unless Your Honor wants to
24 stay late it might be advisable.

25 JUDGE SIPPEL: Well, what's late by your standards?

1 MR. OSHINSKY: Five o'clock, after 5:00, I don't
2 know.

3 JUDGE SIPPEL: Five o'clock easy. We'll do 5:00.

4 MR. OSHINSKY: I'm fine with that time.

5 JUDGE SIPPEL: Well, 5:00, I can't go --

6 MR. JACOBS: And I will have redirect after --

7 JUDGE SIPPEL: I know. There's another day.
8 That's what is nice about three day trial, unless you're in
9 the third day. Yes, okay. You are certainly -- I don't think
10 we are going to call this witness today, do you?

11 MR. OSHINSKY: It doesn't look that way, Your
12 Honor, especially if Mr. Jacobs has redirect.

13 JUDGE SIPPEL: Well, okay, so when we finish with
14 him we'll close for the day and start tomorrow morning with
15 Dr. Duncan.

16 DR. DUNCAN-HIVELY: Thank you, Your Honor.

17 JUDGE SIPPEL: Yes, very well.

18 MR. OSHINSKY: Okay.

19 JUDGE SIPPEL: Okay, let's go.

20 MR. OSHINSKY: Now, Mr. Rice, one of your victims
21 was also a 9-year-old boy, is that correct?

22 THE WITNESS: No.

23 BY MR. OSHINSKY:

24 Q Are you aware that there is information in the
25 record that the victim's mother claims that this boy was nine

1 years old when you molested him?

2 (No audible response.)

3 Q You are aware of the 9-year-old boy, aren't you?

4 A In the record?

5 Q Yes. You are aware of his existence, the 9-year-
6 old boy?

7 A No, I'm not.

8 Q You're not aware that that is one of the
9 informations that you stipulated --

10 (Simultaneous speaking.)

11 A Right. We just didn't have nine year olds over at
12 the house.

13 Q So your answer is you are not aware that there was
14 a 9-year-old boy among the victims that you stipulated to?

15 A Correct.

16 MR. OSHINSKY: All right. I would draw the Court's
17 attention to Page 31 of EB, again, of EB 4.

18 JUDGE SIPPEL: EB 4. Okay, I'm with you. Do you
19 have it, Mr. Rice?

20 THE WITNESS: Yes, I am looking at it.

21 JUDGE SIPPEL: Page 31?

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: Okay.

24 MR. OSHINSKY: Page 31 towards the bottom of the
25 page it begins, this writer also interviewed Ms. Sharon --

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1 actually we shouldn't say the last name. Are you looking at
2 that Mr. Rice?

3 THE WITNESS: I am familiar with that name and that
4 person.

5 JUDGE SIPPEL: It's the second to last paragraph?

6 MR. OSHINSKY: Yes, that's correct: This writer
7 also interviewed Ms. Sharon -- and her son, who remains a
8 juvenile, the juvenile stated that he was approximately nine
9 years of age when he and another juvenile first went over to
10 Mike's house in 1989.

11 I don't need to read the rest of it if Your Honor
12 and Mr. Rice will --

13 JUDGE SIPPEL: No, it's not necessary.

14 MR. OSHINSKY: And having read that does that
15 refresh your recollection?

16 THE WITNESS: Yes.

17 BY MR. OSHINSKY:

18 Q And do you remember this 9-year-old?

19 A I knew who he is from the proceeding, but that was
20 the one that we testified earlier that nothing happened with
21 him.

22 Q So are you -- You are contesting the information
23 that's in this record?

24 A Yes.

25 JUDGE SIPPEL: In this paragraph of Page 31?

1 MR. OSHINSKY: In this paragraph?

2 JUDGE SIPPEL: You are contesting that?

3 (No audible response.)

4 MR. OSHINSKY: And yet you stipulated --

5 JUDGE SIPPEL: Wait, let me hear him answer.

6 MR. OSHINSKY: I'm sorry.

7 THE WITNESS: Yes, it didn't happen.

8 JUDGE SIPPEL: Well then how can you remember that
9 it didn't happen here and those other places --

10 THE WITNESS: Because that was the big thing when
11 we were doing it with the lawyers and they took depositions,
12 they did a lot of things, and it was bogus, and I think I
13 explained in the deposition what the motive was.

14 JUDGE SIPPEL: You mean this deposition in this
15 case?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Did you explain in the deposition
18 what the motive was?

19 THE WITNESS: Um-hmm.

20 JUDGE SIPPEL: That's a yes?

21 THE WITNESS: Yes.

22 MR. OSHINSKY: And what did you believe the motive
23 was, Mr. Rice?

24 THE WITNESS: His uncle was a policeman with a
25 nearby police department and when you have a case that gets

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1 some media attention a lot of people that are not victims show
2 up, and this person may have been at my house at one time, but
3 there was -- not any of the things that he claimed happened
4 in the house.

5 BY MR. OSHINSKY:

6 Q But you recall that he was nine years old, correct?

7 A No. I didn't know how old he was. He was only
8 there one time I believe. He came with someone else and left
9 with someone else.

10 Q But as with the other victim you can't
11 categorically say that he wasn't nine years old, can you?

12 A Well, I didn't check IDs.

13 Q Right. So he could have been nine years old?

14 A Well, he also could not have been nine years old.

15 Q But the part about this recitation here you are
16 contesting is not his age, it's what he alleges you did do
17 him?

18 A Yes, I am contesting that.

19 Q Okay. And you are -- Even though you plead guilty
20 -- I'm sorry, excuse me. You stipulated to facts that this,
21 what happened here happened, is that correct?

22 A Yes. And we explained why that was.

23 Q And your suspicion was that this 9-year-old made
24 these allegations because he was trying to get money from you,
25 is that correct?

1 A That was the belief at that time.

2 Q A 9-year-old was trying to get money from you and
3 that's why he made these allegations?

4 A No, the parents.

5 Q The parents?

6 A Yes.

7 MR. OSHINSKY: Okay.

8 JUDGE SIPPEL: Did you ever get sued for damages?

9 THE WITNESS: Yes, some of them.

10 JUDGE SIPPEL: You did? What, did you settle or
11 did you win, or did you lose?

12 THE WITNESS: There was money put in a fund and
13 they all signed releases and they were paid money.

14 JUDGE SIPPEL: How much?

15 THE WITNESS: I can't disclose that, it was
16 confidential.

17 JUDGE SIPPEL: Well, this is a court of law.

18 THE WITNESS: Okay.

19 JUDGE SIPPEL: You -- This is nothing -- This can't
20 be protected in a court of law, these numbers --

21 MR. JACOBS: I'm not sure --

22 JUDGE SIPPEL: -- but we can take that in camera.
23 I don't want to put this on the record. I'm trying to think.
24 I would like to get -- Was there testimony taken?

25 THE WITNESS: Of the victims?

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1 JUDGE SIPPEL: Of anybody?

2 THE WITNESS: I don't believe so. I believe that
3 the lawyers put money in a universal fund and told the five
4 lawyers representing the victims they can divide it up any way
5 they wanted, so I am not sure who got what.

6 I have a recollection of the top amount of the
7 restitution that we made.

8 JUDGE SIPPEL: Well, aside from the amount, in
9 fact, I mean including the amount, I would like to see that
10 record in camera, because this may have some important
11 evidence in it. We are talking about the same events and the
12 record may show more than it appears.

13 He is having trouble with recollection, this is my
14 frustration. He can't remember, so maybe this will help.

15 MR. JACOBS: Was Toff the attorney?

16 THE WITNESS: Yes.

17 MR. JACOBS: He is deceased though, isn't he?

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: Whose attorney was this guy you are
20 talking about?

21 THE WITNESS: Martin Toff.

22 MR. JACOBS: Mr. Rice's civil attorney.

23 JUDGE SIPPEL: Oh. Is there anybody in his -- Did
24 he have a law firm or was it a sole practitioner?

25 THE WITNESS: He was with a law firm.

1 JUDGE SIPPEL: Still in practice? Is it is still
2 in business I mean, the law firm?

3 THE WITNESS: I think it's been merged several
4 times like law firms are. I'm not sure it's -- I may actually
5 have copies of the stipulations that they signed for the
6 money.

7 JUDGE SIPPEL: There you go. When you can you have
8 them in? When can you get them to me?

9 THE WITNESS: Can I give them to Jerry and he can
10 forward them?

11 JUDGE SIPPEL: You can give -- You should --
12 Everything you do should be submitted through counsel.

13 THE WITNESS: Okay. I may have them, if I can find
14 them.

15 JUDGE SIPPEL: And that would be back home?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Mr. Jacobs --

18 THE WITNESS: I don't mind offering those.

19 JUDGE SIPPEL: -- as an officer of the court I am
20 asking you try and get as complete of record together on that
21 if you can.

22 MR. JACOBS: Yes, Your Honor.

23 JUDGE SIPPEL: I will look at it in camera and
24 decide what to do with it, but I am entitled to see the
25 numbers as long as it's not on a public record.

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1 THE WITNESS: Okay.

2 JUDGE SIPPEL: Go ahead, I'm sorry.

3 MR. OSHINSKY: Thank you, Your Honor. Now, Mr.
4 Rice, is it your belief that you were manipulated by these
5 boys who came to your home to have sex?

6 THE WITNESS: That's a compound question. Do I
7 believe I was manipulated by them?

8 MR. OSHINSKY: Yes.

9 JUDGE SIPPEL: If it's compound split it up.

10 MR. OSHINSKY: When they came to your home to have
11 sex and do you believe that you were being manipulated by them
12 when they did that, or some of the time?

13 THE WITNESS: Maybe, possibly, some of the times.

14 BY MR. OSHINSKY:

15 Q And did you tell --

16 A I mean they were not invited. They knocked on the
17 door and I let them in.

18 Q And you felt that they were there to sort of bend
19 you to their will and get you to have sex with them?

20 A I don't believe that was their motive?

21 Q What do you believe their motive was?

22 A To visit and talk.

23 Q But you would often end up having sex with them
24 when they came over for those reasons, is that true?

25 A Some of them.

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1 Q Now, did you tell this to Dr. Duncan-Hively?

2 A Yes.

3 Q And that's what she put in her report that these
4 boys were manipulating, is that correct?

5 A Yes.

6 MR. OSHINSKY: Your Honor, I apologize, could we
7 take a 5-minute break? I am about to move into a different
8 subject here.

9 JUDGE SIPPEL: Let me just ask one question then.
10 Maybe this has been covered already, but what was the period
11 of time between your, as, what, how many years, between your
12 first act of sex and your being confronted by the police?

13 THE WITNESS: I would guess around five years.

14 JUDGE SIPPEL: Five years?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: And do you have any estimate as to
17 how many times you have had sex with children in that 5-year
18 period?

19 THE WITNESS: No.

20 JUDGE SIPPEL: Well, can you give me a broad guess?

21 THE WITNESS: Um --

22 JUDGE SIPPEL: Let's fill up the glass again.

23 THE WITNESS: Okay.

24 JUDGE SIPPEL: Okay. Assuming it's up at the top
25 is 1000 and keep going down till you get to the number you are

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1 happy with. I know you won't be happy with any number, but --

2 THE WITNESS: I guess I didn't keep a record of
3 that and it's hard to say. Some of them it was one time and
4 others, with the one it was multiple times, the neighbor.

5 JUDGE SIPPEL: Okay. So filling up the glass what
6 would you say, a quarter of the glass, half the glass?

7 THE WITNESS: What does a quarter -- I mean are you
8 trying to assign a number to that?

9 JUDGE SIPPEL: Yes, I'm trying to get something
10 concrete that we can envision. As I said let's say a full
11 glass would be 1000.

12 THE WITNESS: Okay.

13 JUDGE SIPPEL: Okay. Now take it from there, going
14 from zero to 1000, if a full glass is 1000 half, obviously,
15 that would be, a half glass is 500, and so far down the --

16 THE WITNESS: Okay. I think it would be the small
17 glass total.

18 JUDGE SIPPEL: I didn't say anything about the size
19 of the glass.

20 THE WITNESS: Well, I mean --

21 JUDGE SIPPEL: I just want -- Let's try it again,
22 okay.

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: I don't care what size the glass is.

25 THE WITNESS: Right. But you want to know how full

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1 it was?

2 JUDGE SIPPEL: Yes. Assuming that it would take
3 1000, okay, 1000 trysts, and so if that's my assumption, so
4 if it was a half glass full that's 500, right, and a quarter
5 would be 250.

6 THE WITNESS: Okay.

7 JUDGE SIPPEL: I am asking you which, what level
8 would it have been in --

9 (Simultaneous speaking.)

10 THE WITNESS: It would be the bottom glass.

11 JUDGE SIPPEL: The bottom of the glass?

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: Well that would be zero.

14 THE WITNESS: I thought you --

15 JUDGE SIPPEL: The bottom of the glass is zero, the
16 top of the glass is 1000.

17 THE WITNESS: Okay.

18 JUDGE SIPPEL: I am asking what is the range for
19 that glass that you had sex with these children?

20 THE WITNESS: I can guess on a number in the glass.

21 JUDGE SIPPEL: If it's an educated guess that would
22 be fine.

23 THE WITNESS: Okay. I would guess with the
24 neighbor and everyone else, maybe 30 events, but that's only
25 a guess, 27 years ago.

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1 JUDGE SIPPEL: Okay. Well, you're not suggesting
2 it could have been 100, but you think it was 30?

3 THE WITNESS: Right.

4 JUDGE SIPPEL: Right, what?

5 THE WITNESS: I am not suggesting it's 1000 or 500
6 or any of those high numbers.

7 JUDGE SIPPEL: I realize that.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: But, I mean 30 is one number and you
10 are testifying that you have a bad recollection anyway, but
11 if it was 30 it could have been 60 since you don't recall.

12 THE WITNESS: That's true.

13 JUDGE SIPPEL: Okay.

14 THE WITNESS: I mean that whole period of time was
15 so long ago and part of my therapy was to paint some of that
16 out of my mind.

17 JUDGE SIPPEL: Well, we'll have to come back on
18 that.

19 THE WITNESS: Okay.

20 JUDGE SIPPEL: Mr. Oshinsky?

21 MR. OSHINSKY: All right. Your Honor, if Your
22 Honor would allow us to take a break.

23 JUDGE SIPPEL: Oh, yes.

24 MR. OSHINSKY: I have one more question for Mr.
25 Rice. Mr. Rice, when you were trying to assign numbers of

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1 times when you had sex with these children and you mentioned
2 the number 30, is it possible that you had sex 30 times but
3 in one year so that the total would be, for five years would
4 be more than that?

5 THE WITNESS: I really can't answer that because
6 I don't recall.

7 BY MR. OSHINSKY:

8 Q Okay. But it is possible that 30 times is really
9 just 30 times in a year and having done this over five years
10 it could be a great deal more than that 30, isn't that true?

11 A No. I think the one neighbor we talked about was
12 fairly frequent and then the rest of them were maybe one time.

13 Q And so fairly frequent would mean something like
14 four or five times a week?

15 A No, several times a week maybe.

16 Q And that's every week, correct?

17 A Yes.

18 JUDGE SIPPEL: For how many years?

19 MR. OSHINSKY: Five years, Your Honor.

20 JUDGE SIPPEL: Five years.

21 MR. OSHINSKY: Okay. All right, Your Honor, if you
22 would be kind enough to give us a break for five minutes I'd
23 really appreciate it.

24 JUDGE SIPPEL: Certainly.

25 MR. OSHINSKY: Thank you.

1 JUDGE SIPPEL: Most of the 5-minute breaks last for
2 ten minutes.

3 MR. OSHINSKY: Ten minutes, okay.

4 JUDGE SIPPEL: We're off the record.

5 (Whereupon, the above-entitled matter went off the
6 record at 2:48 p.m. and resumed at 3:05 p.m.)

7 JUDGE SIPPEL: Let's go back on the record. Mr.
8 Rice, you're still under oath. Do you understand that?

9 THE WITNESS: Yes, Your Honor.

10 JUDGE SIPPEL: Go ahead, Mr. Oshinsky.

11 BY MR. OSHINSKY:

12 Q Mr. Rice, is it your belief that you suffered from
13 multiple personality disorder during the time period you
14 molested these children?

15 A I'm aware of that, yes.

16 Q And that's something that was mentioned to you when
17 you were being treated by Dr. Stillings, is that correct?

18 A Yes. He made a diagnosis while I was in the
19 hospital.

20 Q In fact, he even had a name for that other
21 personality. Is that correct?

22 A Yes.

23 Q And what was that name?

24 A It was I think Little Mike, something like that.

25 Q Okay. And so, the diagnosis of multiple

1 personality means that you had more than one personality,
2 correct?

3 A Yes.

4 Q And one of your personalities was responsible for
5 molesting these children? Is that correct?

6 A I don't know how to answer that.

7 Q Yes or no?

8 A Could you repeat the question?

9 Q One of your personalities that you've just
10 specified here, just now, was responsible for molesting the
11 children in these cases. Is that correct?

12 A Could have been, yes.

13 Q I'm asking --

14 JUDGE SIPPEL: Is that the best you can do?

15 THE WITNESS: Well, say yes then. Yes.

16 JUDGE SIPPEL: Well, no, no, no, no, no. No, no,
17 no. Not unless you're sure it's yes.

18 MR. OSHINSKY: It's starting --

19 THE WITNESS: I'm not really sure it's, I didn't
20 realize I had the multiple personalities until a lot of
21 testing and a lot of work with --

22 BY MR. OSHINSKY:

23 Q But you realize it now, based on Dr. Stillings'
24 findings?

25 A Yes.

1 Q Right?

2 A Yes. Based on that now.

3 Q Okay. And so, the answer to my question that one
4 of your personalities was responsible for molesting these
5 children is yes? Is that correct?

6 A Put that way, yes.

7 Q And do you still suffer from multiple personality
8 disorder?

9 A No.

10 Q You got treatment for this condition from Dr.
11 Stillings? Is that correct?

12 A Yes.

13 Q You took medication for the condition?

14 A Yes.

15 Q And you underwent psychological therapy for the
16 condition? Is that correct?

17 A Yes.

18 Q And now you believe that you're cured of multiple
19 personality disorder?

20 A Yes.

21 Q And now you only have one personality?

22 A Yes.

23 Q And is the personality you have now the one that
24 committed these sexual acts with the children?

25 A The personality I have now, no.

1 Q So, it's the other personality that was responsible
2 for these sex acts with the children?

3 A I believe so.

4 Q Is that your testimony?

5 A I'm not sure I ever divided it up in my mind.

6 Q Well, if you have to give a yes or no answer, and
7 that's what I'm asking you for, the answer is yes? Do you
8 want me to repeat it?

9 A Please.

10 Q Is the personality that you now have the one that
11 committed these sexual acts with the children?

12 A No.

13 Q Are you still taking medication for this condition?

14 A Yes.

15 Q What medication are you taking for it?

16 A Presently I'm taking Wellbutrin.

17 Q And that is for multiple personality disorder?

18 A No. I think it's for, to overcome manic depression
19 and depression.

20 Q Okay. I'm not talking about that. I'm only
21 talking about multiple personality disorder.

22 A I don't believe that's what it's for. I do not
23 believe that's what it's for.

24 Q Okay. So, the answer to my question, are you still
25 taking medication for this condition would be no? Is that

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1 right?

2 A For the multiple personality disorder?

3 Q Correct.

4 A I would say, no.

5 Q Okay. Are you still getting psychological therapy
6 for that disorder?

7 A No.

8 Q Are you now being treated for dissociative disorder
9 at all?

10 A No.

11 Q Are you now being, or you're not now being treated
12 for bipolar affective disorder, correct? Is that correct?

13 A Yes, no.

14 Q Well, let me get --

15 A No. I got some --

16 Q Maybe my question was unclear.

17 A Okay.

18 Q You are not now being treated for bipolar effective
19 disorder? Is that correct?

20 A That would be yes, not being treated.

21 Q And what about dysthymia? Are you being treated
22 for that?

23 A Is that depression?

24 Q That's my understanding of it. It's a mild form
25 of depression.

1 A Yes.

2 Q So, you are being treated for that?

3 (No audible response.)

4 Q And is that what you're taking the Wellbutrin for?

5 A Yes.

6 Q You are now only occasionally seeing a psychologist
7 or a psychiatrist? Is that correct?

8 A As needed.

9 Q And approximately how frequently is that?

10 A I haven't in several years.

11 Q You've not seen anybody in several years?

12 A Correct.

13 Q So, in terms of determining the frequency, would
14 you say once every two or three years?

15 A I saw Dr. Stillings until possibly 2010 or 2011.

16 Q And you haven't seen a mental health specialist
17 since then?

18 A No.

19 Q And you did not see a mental health specialist
20 until after you got arrested in this case?

21 A Correct.

22 Q You are not now being treated for alcohol abuse?
23 Is that correct?

24 A I'm not treated now, no.

25 Q In fact, you're drinking occasionally would

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1 probably be a violation of the rules of treating alcohol abuse
2 anyway. Is that correct?

3 A I don't think so.

4 Q Well, you said you've been to an Alcoholics
5 Anonymous meeting --

6 A Yes.

7 Q -- while in prison. Do they allow their members
8 to take occasional drinks?

9 A No. You had to be complete sobriety. And I don't
10 consider one drink once every couple of months with a Mexican
11 meal is pertinent. It certainly hasn't triggered anything.

12 Q Okay. But you are not now being, receiving any
13 treatment for alcohol abuse, or attending anything like AA?
14 Is that correct?

15 A Correct.

16 Q Did you ever tell Dr. Stillings that you had sex
17 with children under the age of 14?

18 A I believe so. He, we talked about all the victims.

19 Q Didn't Dr. Stillings say in his report that if you
20 were having sex with a 13 year old, that in that case that
21 would be a sign of pedophilia?

22 A No.

23 Q He never said that in his report?

24 MR. OSHINSKY: Court's indulgence for just a
25 moment.

1 JUDGE SIPPEL: Yes, sir.

2 MR. OSHINSKY: So, looking at EB Exhibit, official
3 exhibits this time, Exhibit 1, Page 20, the middle of the
4 page.

5 MR. KNOWLES-KELLETT: The second set of --

6 MR. OSHINSKY: It's the second set, Your Honor.
7 It's not the --

8 MR. KNOWLES-KELLETT: -- of the official --

9 MR. OSHINSKY: -- directives. It's official notice
10 of it.

11 JUDGE SIPPEL: Official notice. Okay.

12 MR. OSHINSKY: Yes. And this is a report that's
13 attached to the application Mr. Rice sent to the Commission.

14 JUDGE SIPPEL: I have it. What's the date of the
15 document?

16 MR. OSHINSKY: The date of the document? This is
17 Dr. Stillings' report dated --

18 MR. KNOWLES-KELLETT: It's at Tab 1, further down
19 on the document.

20 (Simultaneous speaking.)

21 MR. OSHINSKY: This is the declaration.

22 MR. KNOWLES-KELLETT: Let me just see.

23 MR. JACOBS: I think Mr. Oshinsky is
24 mischaracterizing what that --

25 MR. OSHINSKY: I haven't characterized this at all.

1 It says May 17th, 2001.

2 THE WITNESS: I've lost my place here. It's a
3 little hard --

4 MR. OSHINSKY: It's EB Official Notice Exhibit
5 number 1.

6 JUDGE SIPPEL: And what's the date of that exhibit?

7 MR. OSHINSKY: It's 2001. It's a declaration that
8 --

9 JUDGE SIPPEL: It's not a declaration. It's his
10 application.

11 MR. KNOWLES-KELLETT: It's the declaration that's
12 attached to the application.

13 JUDGE SIPPEL: May 30, 2014 is the application
14 date. That's what I have.

15 MR. OSHINSKY: Yes. This is --

16 JUDGE SIPPEL: This is called application for
17 transfer of control.

18 MR. JACOBS: The report by Dr. Stillings is dated
19 May 17, 2001.

20 JUDGE SIPPEL: All right. I'm trying to keep this
21 straight.

22 We're struggling here to --

23 MR. OSHINSKY: Okay. It's Page 20 of the second
24 set of Exhibits. Each book is divided in half, more or less
25 in half. The first part is the direct case exhibit. There

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1 should be a tab that says official notice exhibits.

2 MR. KNOWLES-KELLETT: And this is --

3 JUDGE SIPPEL: Oh, I see. I got it here on Page
4 15. Declaration of Wayne Stillings?

5 MR. OSHINSKY: Yes. But it's, I'm going to read
6 from Page 20.

7 JUDGE SIPPEL: And Page 20 of that, okay.

8 MR. OSHINSKY: Right. At about the middle of the
9 page.

10 MR. KNOWLES-KELLETT: Okay. And if I could explain
11 for the record, Your Honor? This is the application at issue
12 in this case that was submitted by Patrick Sullivan to assign
13 a translator station to Lake Broadcasting.

14 This declaration of Mr. Stillings was attached as
15 an attachment to the original application received by Media
16 Bureau. And that's just background for -- I think Counsel
17 will stipulate that that's what's going on here.

18 JUDGE SIPPEL: Well, as I understand, with document
19 though you have to be explicit on dates. This is different
20 documents with different dates.

21 MR. KNOWLES-KELLETT: Correct. The application was
22 submitted in 2013. Attached to the application was the 2001
23 declaration of Mr. Stillings. It had been an earlier report.
24 I believe it may have been submitted --

25 MR. OSHINSKY: It's actually in Lake's records as

1 well.

2 JUDGE SIPPEL: Well, I don't want to confuse it any
3 more than it is. But where is the end of this? What page
4 does this go to?

5 MR. OSHINSKY: This report --

6 MR. KNOWLES-KELLETT: Stillings' declaration --

7 MR. OSHINSKY: -- goes to --

8 JUDGE SIPPEL: Stillings' declaration?

9 MR. OSHINSKY: Yes. Stillings' declaration is to,
10 it goes to Page 22. And I'm reading, I'm about to read from
11 Page 20.

12 JUDGE SIPPEL: Fair enough.

13 MR. KNOWLES-KELLETT: And so the record's clear,
14 Your Honor, Mr. Stillings has another letter --

15 MR. OSHINSKY: It's actually doctor.

16 MR. KNOWLES-KELLETT: -- which is Page, it's 13 and
17 14, which was in 2011. But the declaration was attached to
18 that letter to the Commission.

19 JUDGE SIPPEL: Oh, I see.

20 MR. KNOWLES-KELLETT: So, the dates, as Your Honor
21 was saying, we have to be careful with Stillings', because
22 there's the letter which attaches an earlier declaration.

23 JUDGE SIPPEL: I see. And so, your 2001 and 2011,
24 okay. I'm with you. I'm with you.

25 MR. OSHINSKY: All right, Your Honor, I'm about to

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1 read from the paragraph. It's almost smack down in the middle
2 of the page.

3 JUDGE SIPPEL: What page is that?

4 MR. OSHINSKY: Oh, Page 20.

5 JUDGE SIPPEL: Okay. I thought I had that. Let
6 me just catch up, and then we'll go. Okay. I'm getting
7 there. Okay. Middle of Page 20?

8 MR. OSHINSKY: Right. There's a paragraph almost
9 in the, smack down in the middle of the page.

10 JUDGE SIPPEL: What does it say?

11 MR. OSHINSKY: It says, in part it says: As
12 indicated, pedophilia is chiefly characterized by sexual
13 attraction to and sexual activity with pre-pubescent children,
14 generally 13 and younger. Mike Rice has never displayed the
15 syndromatic elements of pedophilia.

16 JUDGE SIPPEL: Do you have that place, Mr. Rice?

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: You're with him? Okay. What's the
19 question?

20 MR. OSHINSKY: The question that was pending was,
21 did you ever tell Dr. Stillings that you had sex with children
22 under the age of 14?

23 THE WITNESS: I'm sure I did. Because we went
24 through all of the people. And we, all of the scenarios
25 there.

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1 BY MR. OSHINSKY:

2 Q But having read this paragraph that I just read
3 from it indicates that Dr. Stillings didn't know that you had
4 sex with 13 year olds, did he?

5 A I believe he did.

6 Q Isn't the import of this paragraph, Mike Rice has
7 never displayed the syndromatic elements of pedophilia?

8 A Yes.

9 Q So, that, one of those syndromatic elements which
10 he states in the sentence before that is having sex with
11 somebody 13 or younger, isn't it?

12 A I'm not sure that there's an age cutoff on that or
13 not.

14 Q Well, you're not a doctor. Dr. Stillings is the
15 doctor.

16 A Yes.

17 Q Right. And he's stating categorically, the way I
18 read it, that somebody who has sex with people 13 or younger
19 is a pedophile.

20 MR. JACOBS: I object.

21 MR. OSHINSKY: And he is --

22 JUDGE SIPPEL: What's the objection?

23 MR. JACOBS: That's not what he's saying.

24 JUDGE SIPPEL: I'll sustain the objection.

25 MR. OSHINSKY: I, that's --

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1 JUDGE SIPPEL: I'll sustain the objection. Let's
2 be more careful.

3 MR. OSHINSKY: Does Your Honor want me, I mean, my,
4 I think my construction is a common sense construction. As
5 indicated, pedophilia is chiefly characterized by sexual
6 attraction to, and sexual activity with pre-pubescent
7 children, generally age 13 and younger.

8 JUDGE SIPPEL: Yes. But there's too many
9 qualifiers. I mean, they're okay. But he's talking about
10 generally, you know.

11 MR. OSHINSKY: Yes. So, Your Honor, my question
12 is, did you tell Dr. Stillings that you were having sex with
13 someone under the age of 13?

14 MR. JACOBS: Thirteen or younger.

15 MR. OSHINSKY: Or 13 or younger, yes.

16 THE WITNESS: I believe the youngest victim was
17 probably 13. I'm not sure what I told him at that point. But
18 we took names, and talked about them and my relationships with
19 them, and my relationships with other people.

20 BY MR. OSHINSKY:

21 Q But the charging document that you stipulated to
22 says that you had sex with somebody under the age of 14?

23 A Correct.

24 Q Did you tell Dr. Stillings that you were charged
25 with a crime against, stemming from having sex with someone

1 under the age of 14?

2 A Yes. I think he saw those documents.

3 Q And do you feel that's consistent with what he
4 wrote here? That you're not having sex with 13 year olds?
5 You're not attracted to them?

6 A I believe that's correct.

7 Q You think that's consistent with what I just read?

8 A I think it is. I mean, you know, you're getting
9 into definitions. And I'm not a doctor. I can't put
10 diagnoses on people.

11 Q All right. Well, let me ask you this question.
12 Dr. Stillings never treated you for pedophilia, did he? To
13 your knowledge?

14 A I'm not sure. He didn't say, well, I'm going to
15 treat you for this or that. And he wasn't specific.

16 Q I asked you a series of questions about the other
17 conditions you had. You knew all about that.

18 A Yes.

19 Q Okay.

20 A But he, I don't think he believed that that was a
21 concern --

22 Q Yes.

23 A -- of him with me.

24 Q But perhaps that's based on what you told him?
25 Isn't that true?

1 A Well, I think he looked at records too.

2 Q What records did he look at?

3 A The attorney furnished them.

4 Q But you didn't give him any records, did you?

5 A No.

6 Q Okay. Thank you.

7 JUDGE SIPPEL: Do you agree with, let me ask this.

8 Do you agree with Dr. Stillings' declaration of 2001?

9 THE WITNESS: Do I agree?

10 JUDGE SIPPEL: Did you hear my question? Do you
11 agree with it?

12 THE WITNESS: Yes. I believe I do.

13 JUDGE SIPPEL: Okay.

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: Did you, how much did you pay him
16 for this?

17 THE WITNESS: The declaration? I'm not sure that
18 I did at all. We had sessions with him. And I can't remember
19 his hourly rate. It wasn't cheap though. And he saw me when
20 I was in the hospital, every day except Sunday.

21 JUDGE SIPPEL: Every day?

22 THE WITNESS: Every day, yes. And we had sessions
23 at that time.

24 JUDGE SIPPEL: Okay.

25 THE WITNESS: Yes.

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1 BY MR. OSHINSKY:

2 Q Mr. Rice, you were aware of the allegations about
3 an 11 year old, having sex with an 11 year old and with a 9
4 year old? You were at least aware of those allegations?
5 Isn't that correct?

6 A Only in the documents in the hearing.

7 Q But you were aware they existed? Is that correct?

8 A From what Jerry showed me, yes.

9 Q Were you aware of them at the time when you went
10 to your stipulated trial?

11 A No. Because the --

12 Q No? But doesn't one of these stipulations concern
13 a 9 year old boy? Allegedly?

14 A I think it was allegedly told to me 12. And that's
15 the one that I denied. And we thought that before.

16 Q And you were aware of the allegations about an 11
17 year old at that time, weren't you?

18 A No.

19 Q And so, did you tell Dr. Stillings about the
20 allegations about the 9 year old or the 11 year old?

21 A No.

22 Q Ever?

23 A No. We talked about the 12 year old.

24 Q A 12 year old?

25 A Yes.

1 Q But that's also under 13, is it not?

2 A Yes, of course.

3 Q Okay. I'm going to move on. During a polygraph
4 test in June of 1996 you admitted to molesting children from
5 the time of your early 30's. Is that correct?

6 MR. JACOBS: Your date is wrong.

7 MR. OSHINSKY: Do I have the date --

8 MR. JACOBS: The polygraph test.

9 MR. OSHINSKY: Yes. What's the date?

10 JUDGE SIPPEL: What exhibit is it?

11 MR. OSHINSKY: Oh, good point. Here. It's part
12 of Exhibit 4. And it's at Page 4.

13 Okay. I apologize, Your Honor, it's June 6, 2000.

14 THE WITNESS: Oh, yes.

15 MR. OSHINSKY: Page 4.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Yarborough Polygraph Services?

18 MR. OSHINSKY: That's the one, Your Honor.

19 JUDGE SIPPEL: And it's dated, what's the date on
20 it?

21 MR. JACOBS: There's no date. But there's a
22 reference in Paragraph 1 to the test having been on June 6,
23 2000.

24 JUDGE SIPPEL: I've got it. Okay. That answers
25 my question. Let's go.

1 MR. OSHINSKY: Okay. All right. So, you want me
2 to repeat the question?

3 JUDGE SIPPEL: Please.

4 BY MR. OSHINSKY:

5 Q During a polygraph test in, this is in June 2000,
6 June 6, 2000, you admitted to molesting children from the time
7 of your early 30's. Is that correct?

8 A No.

9 Q All right. Would you look at the Exhibit that I'm
10 pointing to, Page 4. At the very bottom of Page 4 I'm reading
11 the last paragraph: Mr. Rice admits he has an extensive
12 history of inappropriate sexual interactions with teenage
13 boys. And he has had this interest dating back to his early
14 30's.

15 MR. OSHINSKY: He says he has had a good number of
16 victims over the years. And says the behaviors between he and
17 his victims were very much similar to those behaviors as
18 outlined in his conviction offense report.

19 JUDGE SIPPEL: Let's just stop with the early 30's,
20 that issue. I want to be sure that gets clarified. So,
21 what's the question?

22 MR. OSHINSKY: The question is, are you aware that
23 the information in the records is that you admitted to having
24 an extensive history of inappropriate sexual interactions
25 dating back to your early 30's? Are you aware of that

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1 information in the record?

2 THE WITNESS: I'm reading it right here. Yes.

3 JUDGE SIPPEL: Do you agree with it?

4 THE WITNESS: No.

5 MR. OSHINSKY: But you agree that the person making
6 the report wrote that in his report? Is that correct?

7 THE WITNESS: It appears that way. But I didn't
8 say any of that.

9 JUDGE SIPPEL: It speaks for itself. Let's move
10 on to the next question.

11 MR. OSHINSKY: And at your deposition, and again
12 I have to ask for the Court's indulgence for a second.

13 JUDGE SIPPEL: Certainly.

14 MR. OSHINSKY: At your deposition you told me that
15 it --

16 JUDGE SIPPEL: Give us a page.

17 MR. OSHINSKY: Oh, I'm sorry. Well, that's what
18 I'm going to ask your indulgence for.

19 Your Honor, it begins on Page 30.

20 JUDGE SIPPEL: Thirty, 3-0?

21 MR. OSHINSKY: Yes.

22 JUDGE SIPPEL: This is the deposition?

23 MR. OSHINSKY: Yes.

24 JUDGE SIPPEL: Okay. Why don't you just ask your
25 question?

1 BY MR. OSHINSKY:

2 Q Do you recall telling me that you thought that the
3 polygraph technician had recorded this because he mistook you
4 for someone else?

5 A Yes.

6 Q He confused you with someone else? And that's your
7 answer to, or that's your explanation for this notation in
8 this record?

9 A That's what I assumed. Because I never said
10 anything like that in that examination.

11 Q So, your testimony is you made no such admission
12 in this --

13 A That is correct.

14 Q -- polygraph test? And your reasoning is that this
15 individual who, Mr. Yarborough, confused you with someone
16 else?

17 A That's what I theorized. Because he's kind of an
18 assembly line guy. He does those --

19 Q Do you have some knowledge of him from before this
20 polygraph test?

21 A No. But I was told that he does that for probation
22 and parole. And he does it all the time.

23 Q But your testimony is he wouldn't keep proper
24 records? And he might confuse you with someone else?

25 A It's possible. I don't know what records he keeps.

1 I know what I didn't say.

2 JUDGE SIPPEL: Was he ever confronted by yourself
3 or your attorney about this? Did you get the wrong person,
4 Mr. Yarborough?

5 THE WITNESS: No. It's a requirement when you're
6 on probation and parole that you take a polygraph. And I took
7 it and passed it.

8 JUDGE SIPPEL: Well, but if you think it's about
9 the wrong person, wouldn't that give you pause?

10 THE WITNESS: I didn't know this until way after
11 the fact, that I saw this.

12 JUDGE SIPPEL: Way after the fact of you're taking
13 the polygraph?

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: Oh, I see that.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: You're saying that you found out
18 that you passed the polygraph?

19 THE WITNESS: He said that, yes. He said that.

20 JUDGE SIPPEL: He said that to you? And that's --

21 THE WITNESS: He said that to me.

22 JUDGE SIPPEL: -- the end of it? You weren't
23 interested in anything more? He doesn't give you a copy of
24 this report?

25 THE WITNESS: No.

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1 JUDGE SIPPEL: Okay.

2 MR. OSHINSKY: Your Honor, so I'd like you to turn
3 to Page 5. And just to put a finish on this.

4 JUDGE SIPPEL: Where are we? Five of the exhibit?

5 MR. OSHINSKY: Page 5. The same exhibit of the
6 polygraph.

7 JUDGE SIPPEL: Oh.

8 MR. OSHINSKY: The next page. The very next page.

9 JUDGE SIPPEL: I'm with you.

10 MR. OSHINSKY: All right. Reading just a couple
11 of lines from that. Question 5, Did you lie to me about the
12 manner in which you groomed your adolescent sex partner over
13 the years? Answer, No. Did you intentionally try to mislead
14 me about the number of your inappropriate sexual involvements
15 over the years? Answer, No. And he believed those answers
16 of yours were truthful. And that's why he told you you
17 passed.

18 THE WITNESS: That's right.

19 MR. OSHINSKY: But part of the basis of that is
20 that you admitted to a much, much earlier pattern of molesting
21 children?

22 THE WITNESS: No. I didn't do that. And it was
23 not part of the polygraph.

24 MR. OSHINSKY: So, you believe the second page is
25 correct, but the first page is incorrect? Is that right?

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1 That's what you're testifying to?

2 MR. JACOBS: Your Honor, this --

3 JUDGE SIPPEL: Wait a minute. Wait a minute. Wait
4 a minute. We've got a question outstanding. Go ahead.

5 MR. OSHINSKY: Well, that was the question, Your
6 Honor.

7 JUDGE SIPPEL: Do you understand the question?

8 MR. OSHINSKY: You're telling the Court that the
9 second page is correct, but the first page is incorrect?

10 THE WITNESS: Yes.

11 MR. OSHINSKY: Now, at the end of your parole --

12 MR. JACOBS: Are we still on the letter?

13 JUDGE SIPPEL: No.

14 MR. JACOBS: All right. I'd like to say, this
15 letter is weirdsville.

16 JUDGE SIPPEL: Which letter?

17 MR. JACOBS: If you look at it --

18 JUDGE SIPPEL: You mean the Yarborough letter?

19 MR. JACOBS: The Yarborough letter. Because Page
20 1 has a description of what supposedly was said at the lie
21 detector test. Page 2 then takes out of context two
22 questions, Question 5, and Question 7. What happened to all
23 the other questions?

24 MR. OSHINSKY: Your Honor --

25 (Simultaneous speaking.)

1 MR. OSHINSKY: The first page is an interview. And
2 the second page is what the technician finds was the result
3 of the test. So, it's a pre-test interview. And as, Your
4 Honor will hear some explanation about how this is done. I
5 do have one more question.

6 JUDGE SIPPEL: You've got redirect time to do that,
7 Mr. Jacobs. Let's go.

8 BY MR. OSHINSKY:

9 Q Mr. Rice, isn't it true that in fact you were
10 referred for this polygraph because the treatment providers
11 at the Department of Corrections believed that you had been,
12 you had a more extensive history of offending than you were
13 admitting to? Isn't that the reason you were referred for
14 this polygraph?

15 A No, it's a standard thing they do with all people
16 that are on supervision.

17 Q Okay. And at the end of parole you have another
18 standard polygraph test, which is set up for you? Is that
19 correct?

20 A That is correct.

21 Q And you did not take that second polygraph test?

22 A That is correct.

23 Q So, one would think that having such a big
24 disagreement with the report from the first polygraph test you
25 would be anxious to take a second polygraph test where you

1 could clear the matter up.

2 A I didn't see this report until after I was off of
3 parole.

4 Q But taking that second polygraph test was part of
5 your conditions of parole, was it not?

6 A Yes.

7 Q Yet, you did not take it?

8 A I did not.

9 Q All right.

10 JUDGE SIPPEL: Does that mean you violated the
11 terms of your parole?

12 THE WITNESS: No. We had a discussion with Dr.
13 Stillings. And he wrote a letter saying he didn't think it
14 would be in the best interest of my treatment to take that
15 test. And a polygraph examiner will not give a test if a
16 doctor writes the statement.

17 JUDGE SIPPEL: Well, who did he write the letter
18 to?

19 THE WITNESS: The polygraph guy.

20 JUDGE SIPPEL: You mean Yarborough?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Do we have a copy of that letter?

23 THE WITNESS: I don't.

24 JUDGE SIPPEL: Well, that's interesting. Who does?

25 THE WITNESS: I don't know.

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1 JUDGE SIPPEL: Well wouldn't you -- I'm interested
2 in seeing that letter. This was with my --

3 THE WITNESS: That would be, then ask one of the
4 expert witnesses at the enforcement bureau, is it true that
5 if a medical person doesn't want their client to take it, the
6 polygraph operator will not give it to him?

7 JUDGE SIPPEL: Yes.

8 THE WITNESS: And that was the case in this --

9 JUDGE SIPPEL: What I'm trying to find out, who was
10 it that, was this Dr. Stillings that wrote that letter?

11 THE WITNESS: Yes. Stillings, yes.

12 JUDGE SIPPEL: Okay. So, why aren't we getting the
13 letter from Dr. Stillings?

14 MR. JACOBS: He's dead.

15 JUDGE SIPPEL: Well, is there somebody that has his
16 records?

17 MR. JACOBS: Not as far as we know.

18 JUDGE SIPPEL: Well, then I have no basis to
19 believe that explanation. I don't, there's no basis. The
20 man's dead.

21 MR. JACOBS: There's also no basis for saying that
22 there was a second, supposed to be a second test.

23 JUDGE SIPPEL: He's, the witness says that there
24 was supposed to be one. But he got out of it because the
25 doctor wrote a letter.

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1 MR. JACOBS: Well, it seems to me the Bureau of
2 Corrections, Department of Corrections ought to have a
3 notation about whether there would be parolees have taken the
4 test or not taken the test.

5 JUDGE SIPPEL: Well, have you sought to get that?

6 MR. JACOBS: No.

7 JUDGE SIPPEL: Well, do you think, could you
8 undertake to do that, please?

9 MR. JACOBS: Okay.

10 JUDGE SIPPEL: I want Dr. Stillings', a copy of Dr.
11 Stillings' letter, or a notation to that effect. Go ahead.

12 MR. OSHINSKY: Okay. I have just a couple more,
13 Your Honor. Mr. Rice, you currently have friends where you
14 live, where you reside?

15 THE WITNESS: I have boarders there.

16 BY MR. OSHINSKY:

17 Q Just boarders? You don't have any friends there?

18 A Well, I consider them friends.

19 Q You have a number of people who wrote reference
20 letters for you? Is that correct?

21 A Yes.

22 Q You don't describe them as friends?

23 A Oh, I believe they're friends, people that I know
24 either through business or through different activities I'm
25 involved with. One of them came from an officer in our

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1 neighborhood.

2 JUDGE SIPPEL: What do you mean, an officer?

3 THE WITNESS: He's secretary of our corporation.

4 JUDGE SIPPEL: Oh.

5 THE WITNESS: The neighborhood.

6 JUDGE SIPPEL: He's not a police officer?

7 THE WITNESS: Oh, no. No.

8 JUDGE SIPPEL: You threw me off there. Go ahead,
9 sir.

10 MR. OSHINSKY: I didn't mean to interrupt.

11 JUDGE SIPPEL: No. Yes. Go, go.

12 BY MR. OSHINSKY:

13 Q Are you also friendly with your neighbors?

14 A Yes.

15 Q And your friends around your residence trust you?
16 Is that correct? They trust you?

17 A Yes.

18 Q In fact, one of your friends trusts you enough to
19 let you take care of his underage children? Is that correct?

20 A No.

21 Q That's not correct?

22 A No. That's not correct.

23 Q So, you have not in fact taken care of any of your
24 friends' or neighbors' children?

25 A That is correct. Now, you want me to explain it?

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1 Q No, no.

2 A One of the letters there --

3 Q No, no.

4 JUDGE SIPPEL: Wait, wait, wait. Wait for your
5 question.

6 MR. OSHINSKY: I'm sorry, Your Honor. I have to
7 ask for your indulgence. And actually, this is the last I'm
8 going to --

9 JUDGE SIPPEL: Oh, I get asked a lot.

10 (Whereupon, the above-entitled matter went off the
11 record at 3:39 p.m. and resumed at 3:39 p.m.)

12 MR. OSHINSKY: According to Mr. Karan, he
13 occasionally left his children with you, under your watch --

14 JUDGE SIPPEL: What are you reading from?

15 MR. OSHINSKY: -- while he was working. Oh, I'm
16 sorry. I apologize, Your Honor. This is one of the letters
17 that Lake is offering, which Your Honor talked about --

18 JUDGE SIPPEL: Right.

19 MR. OSHINSKY: -- this morning.

20 JUDGE SIPPEL: Right. That's --

21 MR. OSHINSKY: And, oh, yes --

22 JUDGE SIPPEL: What tab is that?

23 MR. OSHINSKY: I'm sorry. It's Lake Broadcasting,
24 I think it's Exhibit 3, Appendix C. Is that right?

25 Exhibit 1, Appendix C.

1 JUDGE SIPPEL: Okay. Yes, I've got it.

2 MR. OSHINSKY: So, it's the fifth letter, Your
3 Honor. It's dated November 24th, 2014.

4 JUDGE SIPPEL: Who's the sender of the letter?

5 MR. OSHINSKY: John Adam Karan.

6 JUDGE SIPPEL: Okay.

7 MR. OSHINSKY: And in this letter --

8 JUDGE SIPPEL: Okay. I got it.

9 MR. OSHINSKY: He states that he has occasionally
10 left his children under Mr. Rice's watch while he was working,
11 or had other issues regarding his new company. Now --

12 JUDGE SIPPEL: Where is that line?

13 MR. OSHINSKY: That's about in the middle of the
14 paragraph, the second paragraph.

15 JUDGE SIPPEL: Okay. Would you repeat it again,
16 where it shows up?

17 MR. OSHINSKY: It says --

18 JUDGE SIPPEL: After consulting my wife?

19 MR. OSHINSKY: No: The children grew to like him,
20 and never were in any danger around Mike. I trusted him with
21 them, and occasionally left the children under his watch while
22 I was working on other issues regarding our new company. Now,
23 having heard that, Mr. Rice, is your recollection refreshed?

24 THE WITNESS: Yes.

25 BY MR. OSHINSKY:

1 Q And so, you have taken care of underage children?

2 A No. They were in the work, the vicinity. I had,
3 I wasn't taking care of them. This was a job site that Mr.
4 Karan was at, and I was at. And I think his kids, they
5 weren't real little. But they were there. And he and his
6 wife also worked there. And they had no concern with them
7 being around me, is what I believe he meant.

8 Q So, he left you alone with his underage children?
9 Is that correct?

10 A I was not alone. I was with some other workers.

11 Q Let me just read one sentence before that: After
12 consulting with my wife we decided to allow our children to
13 have communication and interaction with Mike. This proved to
14 be appropriate and healthy for our children. The children
15 grew to like him, and never were in any danger around Mike.
16 I trusted him with them, and occasionally left the children
17 under his watch while I was working on other issues.

18 Didn't he leave his children with you, alone with
19 you?

20 A No. I think he was on the premises, probably in
21 the office doing things. We were trying to get this business
22 going.

23 JUDGE SIPPEL: That doesn't mean that you were not
24 alone with the children though.

25 THE WITNESS: I was never alone by myself with

1 them. No, sir.

2 JUDGE SIPPEL: Well, usually that's the way it
3 goes, alone by yourself.

4 THE WITNESS: I was not. I don't know what, how
5 they characterized it --

6 MR. OSHINSKY: He said he left them under your
7 watch. That sounds to me like he left them, left you to take
8 care of his children.

9 THE WITNESS: I wasn't taking care of them. They
10 were just there.

11 MR. OSHINSKY: The Court's indulgence for one last
12 minute. That's all I have, Your Honor.

13 JUDGE SIPPEL: Well, what does he say? He says,
14 after consulting with my wife we decided to allow our children
15 to have communication and interaction with Mike.

16 I don't know, whatever interaction is.

17 This proved to be appropriate and healthy for our
18 children. The children grew to like him, and never were in
19 danger around Mike. I trusted him with them, and occasionally
20 left, occasionally left the children under his watch while I
21 was working on other issues regarding our new company.

22 It clearly, I clearly read that to say that he
23 allowed you to be entrusted with the children alone. He might
24 have been in the other room. But you were with the children
25 alone. That's what he's saying. Plus he says it right there.

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1 I mean, it's because it's English. No?

2 THE WITNESS: That's what he says. But I don't
3 recall any occasion I was alone --

4 JUDGE SIPPEL: Well, you don't recall anything.
5 I'm not going to worry about that. This is dated November
6 24th, 2014.

7 MR. JACOBS: Your Honor, I object.

8 JUDGE SIPPEL: Why?

9 MR. JACOBS: The word alone does not naturally flow
10 from saying under his watch.

11 JUDGE SIPPEL: Occasionally left the children under
12 his watch. Well, to me it does. Because if it was not alone
13 he would have qualified the sentence that way. There would
14 have been other people with him.

15 But he says, unequivocally, that he left the
16 children under his, Mr. Rice's, watch while I was working on
17 other issues. I'm going to interpret that as meaning alone.
18 But, so is this, are you finished with these letters?

19 MR. OSHINSKY: Yes, Your Honor.

20 JUDGE SIPPEL: Okay. Somehow or other these, all
21 these letter writers, they got your name okay, but they
22 misspelled my name.

23 THE WITNESS: Oh, no.

24 JUDGE SIPPEL: How did that happen? Were they in
25 a room together and --

1 THE WITNESS: No, no, no.

2 JUDGE SIPPEL: -- everybody gets a form to fill
3 out?

4 THE WITNESS: No. I'm sorry that they misspelled
5 your name. I didn't notice.

6 JUDGE SIPPEL: All of them did, every single one
7 of them. That leaves me to suspect something. Not something
8 bad. Okay. Let's go. What do you have next?

9 MR. OSHINSKY: Your Honor, just let me -- All
10 right, Your Honor. No. I have nothing more of this witness.

11 JUDGE SIPPEL: Redirect?

12 REDIRECT EXAMINATION

13 MR. JACOBS: Thank you, Your Honor. I'm a little
14 perplexed about how to make some of the points which I would
15 like to make. And they don't necessarily involve the
16 testimony by Mr. Rice. But let me try.

17 JUDGE SIPPEL: Well, just keep trying. Keep going.

18 MR. JACOBS: Just let me try.

19 JUDGE SIPPEL: Do something. Because you're not
20 doing anything when you talk like that.

21 MR. JACOBS: Okay. There was a lot of time spent
22 earlier today trying to understand the meaning of the report
23 that --

24 JUDGE SIPPEL: Which report are you talking about?
25 Exhibit 4?

1 MR. JACOBS: I'm getting to it, please. The report
2 by Mr. Braun.

3 JUDGE SIPPEL: Okay. What's that Exhibit number?

4 MR. JACOBS: It's the -- Well, let me go back
5 farther than that. The question arose about the second
6 amended information which was the bureau's exhibit.

7 JUDGE SIPPEL: What number?

8 MR. JACOBS: It's 10, Your Honor.

9 JUDGE SIPPEL: Okay. That's what I thought. Go
10 ahead.

11 MR. JACOBS: And --

12 JUDGE SIPPEL: What page?

13 MR. JACOBS: Well, it seems to me there was the
14 overall question of, what was the significance of this whole
15 thing? What kind of proceeding was there? And I just wanted
16 to --

17 JUDGE SIPPEL: Well, why don't you just ask him the
18 question? You don't have to have all this explanation.

19 MR. JACOBS: Well, I'm going to make sure that he
20 has all the --

21 JUDGE SIPPEL: Well, he'll --

22 MR. JACOBS: -- information here.

23 JUDGE SIPPEL: Well, we don't know until you ask
24 the question. We don't have time.

25 MR. JACOBS: Okay.

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1 JUDGE SIPPEL: Let's go.

2 MR. JACOBS: Okay. Mr. Rice, turning to the second
3 amended information, which describes the 12 counts of the
4 indictment, what is your understanding of the kind of court
5 proceeding that was held?

6 THE WITNESS: As it was described to me by legal
7 representation, that it's better not to have an evidentiary
8 trial on a case like this. Instead we should do a stipulation
9 which a judge, I'm sure will find you guilty of the
10 stipulation. And he stipulated to I believe what the victims
11 would say if they were called to testify. I believe, I don't
12 have that document. But I did hear it was something like
13 that.

14 JUDGE SIPPEL: Well, that's the one that they have
15 the names redacted. But anyway, go ahead.

16 THE WITNESS: No, this was, Your Honor, this was
17 the sentencing document that had that. And it --

18 JUDGE SIPPEL: Am I missing something? You're
19 nodding yes.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: Okay. So, what am I missing?
22 Anybody know?

23 MR. JACOBS: There was a different document, which
24 was the sentencing document. But the point is --

25 JUDGE SIPPEL: Well, I'd like to find out. But go

1 ahead. We'll come back to that. So, what's your point?

2 MR. JACOBS: So, at the end of this proceeding the
3 judge did what?

4 THE WITNESS: He said, Mr. Rice, we find you guilty
5 as per the stipulation.

6 MR. JACOBS: Okay. The other document that I'm
7 referring to is Page 23 of the Bureau's Exhibit 4.

8 JUDGE SIPPEL: Before we pass on to that, since we
9 have Exhibit 10 now in front of me, I want to just note the
10 memorandum. It's called, well, I'm not going to give the
11 name. But it's a memorandum.

12 And it says that, the parties agree that if certain
13 witnesses were called to testify in this case. Their
14 testimony would be as set forth herein. The defendant --
15 that's you -- specifically does not admit that any of the
16 testimony is true, or that any of the acts took place.

17 The expected testimony is set out herein by count,
18 and said counts are in reference to the counts as set forth
19 in the second amended information filed by the state in this
20 case. The state and defendant submit this cause to the Court
21 with the following being a stipulation as to what the
22 testimony would be.

23 Which testimony? You don't admit that any of it's
24 true? Well, according to this document. You want to see it?

25 THE WITNESS: No. I've seen it.

1 JUDGE SIPPEL: So, what do we have there? What is
2 that? What do we have?

3 THE WITNESS: Well, that went before the Judge.
4 And --

5 JUDGE SIPPEL: No, I know. It seems to be a local
6 procedure --

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: -- in Missouri. But anyway, you
9 ended up pleading guilty to that, or you were found guilty of
10 that, by virtue of this stipulation? I believe it's the
11 latter.

12 THE WITNESS: I believe it is the latter. But --

13 JUDGE SIPPEL: It is the latter, okay.

14 THE WITNESS: But --

15 JUDGE SIPPEL: So, you've been convicted of all
16 these counts?

17 THE WITNESS: Yes, sir.

18 JUDGE SIPPEL: Okay. Then we have nothing to argue
19 about. Let's go.

20 MR. JACOBS: So, in Bureau Exhibit 4, Page 23,
21 which has been spoken of a lot today, there is a short memo
22 dated September 27, 1994, from Timothy Brawn. And --

23 JUDGE SIPPEL: He's the prosecuting attorney for
24 St. Charles County?

25 MR. JACOBS: Right. And I wanted to provide the

1 context for that. This is a pre, as it says, please see
2 attached pre-sentence investigation. This is a pre-sentence
3 memo.

4 MR. OSHINSKY: Your Honor, I just want to know one
5 thing. Mr. Jacobs is actually offering testimony here, rather
6 than --

7 JUDGE SIPPEL: I know. I'm getting too much of
8 that. He's proffering what he wants -- What is the point that
9 you want to establish?

10 MR. JACOBS: That that's what this is. That this
11 is a document which --

12 JUDGE SIPPEL: It speaks for itself. It speaks for
13 itself.

14 MR. JACOBS: Speaks for itself.

15 JUDGE SIPPEL: So, that's it.

16 MR. JACOBS: But it's important to recognize the
17 dates involved.

18 JUDGE SIPPEL: I, okay. What date are we talking
19 about, September 27th, 1994?

20 MR. JACOBS: Right.

21 JUDGE SIPPEL: That's the only date I see.

22 MR. JACOBS: And September 30 is when Mr. Rice
23 began his prison sentence.

24 JUDGE SIPPEL: You're not, you're testifying to it.
25 You're not even asking your witness, when did you begin your,

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1 you know. You know how it goes. When did you begin your
2 sentence, or your incarceration? Was it September 1, 2, 3?

3 THE WITNESS: Thirty days after the sentence was
4 given.

5 JUDGE SIPPEL: Thirty days after --- let's, well --

6 MR. JACOBS: Okay.

7 JUDGE SIPPEL: Can you do anything with that, Mr.
8 Jacobs?

9 MR. JACOBS: No. I think it just clarifies for the
10 record what this document is.

11 JUDGE SIPPEL: Yes. I understand that. But I
12 don't see any --

13 MR. JACOBS: I thought that --

14 JUDGE SIPPEL: He's saying that it was 30 days
15 after the action on the stipulation. Is that right?

16 THE WITNESS: That is correct.

17 JUDGE SIPPEL: And I'm saying it's September 27,
18 1994. Does that jive? I mean, does that correlate?

19 MR. OSHINSKY: Your Honor, if I could point out
20 that this says, please see attached pre-sentence
21 investigation. This is pre-sentence.

22 JUDGE SIPPEL: So, you can't read that Page 23
23 without reading what comes after it. Am I right?

24 MR. OSHINSKY: The pre-sentence report could have
25 been all right. Yes. It could have been earlier. All we

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1 know is that at some point a petition or a motion was made for
2 early release in this case. And this was the state's
3 response.

4 JUDGE SIPPEL: Well, you know --

5 MR. JACOBS: That's where --

6 JUDGE SIPPEL: This is not the best record I've
7 ever seen.

8 MR. JACOBS: That's where things get confused.

9 JUDGE SIPPEL: Well, don't tell me what I should
10 know. What's going on here? You got, now you're talking
11 about a Page 23, which is a very short paragraph, okay. So,
12 we've established these dates. You said it was just for
13 establishing dates. We have the dates. Now, can you go to
14 the next question? Because, well, just before.

15 MR. JACOBS: What I was trying to point out is that
16 this is not an early release document. This is a pre-
17 sentencing document.

18 JUDGE SIPPEL: Well --

19 MR. JACOBS: Despite whatever it may say.

20 JUDGE SIPPEL: We don't want your testimony, Mr.
21 Jacobs.

22 MR. JACOBS: All right.

23 JUDGE SIPPEL: We don't want that.

24 MR. JACOBS: Well, fine.

25 JUDGE SIPPEL: Well, if you want to ask questions,

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1 I'm here to listen to the questions.

2 MR. JACOBS: All right. I'll go on to certain --

3 JUDGE SIPPEL: Thank you.

4 MR. JACOBS: -- questions.

5 JUDGE SIPPEL: Thank you.

6 MR. JACOBS: Mr. Rice, there has already been some
7 testimony on your part concerning your use of alcohol. But
8 I would like just to clarify this with a few more questions.
9 Are you an alcoholic?

10 THE WITNESS: No, sir.

11 MR. JACOBS: Do you drink at all?

12 JUDGE SIPPEL: Asked and answered.

13 THE WITNESS: Yes.

14 JUDGE SIPPEL: Let's go. Next question.

15 BY MR. JACOBS:

16 Q And do you keep liquor at home?

17 A No.

18 Q When did you stop regular drinking?

19 A Oh, many years ago. Because the medicine that Dr.
20 Stillings prescribed, if you had alcohol it would make you
21 very sick.

22 Q And, but you have said that occasionally you do
23 take a drink. Can you please expound on that a little bit?

24 A Yes. I like Mexican food. And we have some good
25 ones in St. Louis. And they have delicious Margaritas. And

1 I will have one Margarita with my Mexican food and burritos.

2 JUDGE SIPPEL: Okay. He's already testified to
3 that.

4 MR. JACOBS: And that's the extent of your
5 drinking?

6 THE WITNESS: That is the extent of it, yes.

7 JUDGE SIPPEL: Okay. Move on.

8 MR. JACOBS: Next. Are you mentally ill?

9 THE WITNESS: I'm not.

10 JUDGE SIPPEL: I was going to say, what do you mean
11 by that question? But that's your question. You live with
12 it.

13 MR. JACOBS: Can you briefly describe your periods
14 of treatment, beginning with Barnes?

15 THE WITNESS: Okay. Barnes Hospital, I was put
16 into a psychiatric unit and --

17 JUDGE SIPPEL: What year was this?

18 THE WITNESS: That would be, what, I guess 1991,
19 just shortly after the arrest.

20 MR. JACOBS: Right.

21 THE WITNESS: I was there for a period of six
22 months. And we had, Dr. Stillings visited six days a week.
23 And we had sessions to treat those disorders that I had at
24 that time. And discussed the case. I think at one time there
25 was a staff psychologist that saw me several times.

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1 MR. JACOBS: And reference is made to 84 sessions
2 with Dr. Stillings. Can you tell us what that is?

3 THE WITNESS: Okay. After I was released from
4 prison I voluntarily continued treatment with Dr. Stillings.

5 JUDGE SIPPEL: What year was that?

6 THE WITNESS: End of 1999.

7 JUDGE SIPPEL: So, the first reference is to 1990-
8 1991. And now you're back to '99? Is that right? We're
9 talking about eight years lapse?

10 MR. JACOBS: With prison in between.

11 JUDGE SIPPEL: I understand that. I'm just trying
12 to follow the timeframe.

13 MR. JACOBS: Okay.

14 JUDGE SIPPEL: Go ahead.

15 MR. JACOBS: And so, when you were released from
16 prison at the end of 1999, you continued your treatment with
17 Dr. Stillings?

18 THE WITNESS: Yes.

19 MR. JACOBS: And also, what else? Another program?

20 JUDGE SIPPEL: No, no. You stop with the what
21 else.

22 THE WITNESS: I attended a post-release program
23 with a Dr. Robinson.

24 MR. JACOBS: Mark Lee Robinson?

25 THE WITNESS: Mark Lee Robinson.

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1 BY MR. JACOBS:

2 Q And how long did that last?

3 A Until almost the end of my parole period.

4 Q So, in other words, like a year and a half --

5 A Yes, something like that.

6 Q -- to two years? There has been or will be
7 testimony criticizing that period. Can you tell me what you
8 understand what the problem was?

9 JUDGE SIPPEL: With Dr. Robinson now?

10 MR. JACOBS: Yes.

11 JUDGE SIPPEL: What did he treat you for?

12 THE WITNESS: Well, it was for sex offender and
13 group therapy, and anger management, things like that.

14 JUDGE SIPPEL: Okay.

15 THE WITNESS: It was, the program was a 12 week
16 introduction. And then there were once-a- week sessions for
17 a year, year and a half.

18 JUDGE SIPPEL: This is after you got out of prison?

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: And this was probably one of the
21 conditions of your parole? Is that right?

22 THE WITNESS: Yes.

23 BY MR. JACOBS:

24 Q And it had been signed off on by your parole
25 officer?

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1 A Yes. It was, they had a list of therapists that
2 you could go to. And it was fairly close. And selected him.

3 Q But lo and behold, at almost the end of this two
4 year period or so, what happened?

5 A I don't know the terminology. But the probation
6 and parole didn't think he had the proper credentials to
7 continue on with this treatment, even though they had approved
8 them in this other thing. So, they terminated his ability to
9 do that sort of program for the Department of Probation and
10 Parole, to my understanding.

11 JUDGE SIPPEL: Who picked up where Dr. Robinson
12 left off?

13 THE WITNESS: I was to go search for a new group.
14 But I was only about a month or so away from being released.
15 And by the time I had visited and been interviewed, the time
16 had elapsed. So, I didn't really join a group at that time.

17 JUDGE SIPPEL: Okay.

18 MR. JACOBS: Now, Your Honor, I mention this phase
19 because there is a reference in the direct testimony that we
20 may receive tomorrow from Tammy --

21 JUDGE SIPPEL: Well, you're talking about something
22 that's not in the record.

23 MR. JACOBS: Right.

24 JUDGE SIPPEL: I'm not going to allow that.

25 MR. JACOBS: So, after you completed that post

1 release course in 2002, what further treatments did you have?

2 THE WITNESS: I would see Dr. Stillings about once
3 a month. He'd review the medications, and review my progress.

4 MR. JACOBS: And then, in October --

5 JUDGE SIPPEL: Well, wait a minute. Were those
6 regular visits? Or were those visits directed by the parole
7 officer?

8 THE WITNESS: No. It was voluntary.

9 JUDGE SIPPEL: So, this was just regular --

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: -- your regular doctor in a sense?

12 THE WITNESS: Yes. Well, he was --

13 JUDGE SIPPEL: It's all right. Let's --

14 THE WITNESS: -- treating on the --

15 JUDGE SIPPEL: -- move on. That's enough.

16 THE WITNESS: -- issues that I had.

17 JUDGE SIPPEL: Yes.

18 THE WITNESS: And I --

19 JUDGE SIPPEL: I don't mean to cut you off. But
20 that clarifies it for me. I'm sorry, Mr. Jacob.

21 MR. JACOBS: So, those continued. And then in
22 October 2011 you asked Dr. Stillings to write an updated
23 report, a follow-up report. And --

24 JUDGE SIPPEL: You know, you're supposed to ask the
25 witness, what did he do next? What happened next? You're not

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1 supposed to be putting your own testimony in the record.

2 MR. JACOBS: Okay.

3 JUDGE SIPPEL: Okay.

4 MR. JACOBS: And he produced a letter, right?

5 THE WITNESS: Yes.

6 MR. JACOBS: And what did the letter say? The
7 letter is found at Lake Exhibit 1, Appendix D.

8 JUDGE SIPPEL: Hold on.

9 MR. KNOWLES-KELLETT: Your Honor, this is the
10 letter we objected to.

11 JUDGE SIPPEL: Yes.

12 MR. KNOWLES-KELLETT: And coming in for any kind
13 of truth. Because the guy, the witness is dead.

14 JUDGE SIPPEL: Right. And do you have a copy of
15 this letter? The witness doesn't have a copy of the letter.

16 THE WITNESS: I have seen it.

17 JUDGE SIPPEL: Well, that's not enough.

18 THE WITNESS: It's in the --

19 JUDGE SIPPEL: That's not enough.

20 THE WITNESS: Okay.

21 JUDGE SIPPEL: You got to know what the man's
22 talking about. And okay. Recognizing that Dr. Stillings is
23 dead, and can't be cross examined about what he wrote, what
24 is your question?

25 MR. JACOBS: What does Dr. Stillings conclude about

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1 your mental well-being?

2 JUDGE SIPPEL: We got it right in the document.
3 The document says what it is.

4 MR. JACOBS: Well, please read the first sentence.

5 MR. OSHINSKY: Well, apart from that Your Honor,
6 our objection is about the conclusions in here.

7 JUDGE SIPPEL: I realize that.

8 MR. OSHINSKY: Because he can't --

9 JUDGE SIPPEL: Yes.

10 MR. OSHINSKY: Okay. He can't --

11 JUDGE SIPPEL: I realize that. So, I don't know
12 why we're spending any time on this. Dr. Stillings is dead.
13 If they wanted to bring him in to cross examine him, they'd
14 have to dig him up. Let's go on.

15 MR. JACOBS: All right. The subject matter of this
16 application is an FM translator station.

17 JUDGE SIPPEL: Can the witness tell us that? All
18 right. Never mind.

19 MR. JACOBS: This is the applicant.

20 JUDGE SIPPEL: You're giving background. Go ahead.

21 MR. KNOWLES-KELLETT: Does this go anything on the
22 cross? Or is this a new matter that wasn't in his direct?

23 MR. JACOBS: I am trying to lay the foundation for
24 a, this exhibit, which we may wish to introduce later on in
25 this proceeding. But since the sponsoring person is Mr. Rice,

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1 I think this is the right time to at least identify this
2 exhibit, and --

3 JUDGE SIPPEL: Well, wait a minute. Is Mr. Rice
4 going to be here throughout this hearing?

5 MR. JACOBS: Yes.

6 JUDGE SIPPEL: Or does he go back tomorrow, or
7 something like that?

8 MR. JACOBS: No. He --

9 THE WITNESS: I'll be here for a couple of days.
10 Maybe not all of it. But --

11 JUDGE SIPPEL: Well --

12 THE WITNESS: I think for several days.

13 JUDGE SIPPEL: Not all of it? Not all if it you
14 don't think? You don't think you're going to be here for all
15 of it?

16 THE WITNESS: Well, it should be over with Friday.
17 And that's when I'm planning to --

18 JUDGE SIPPEL: Oh. So, wait until the appropriate
19 time. We may be able to stipulate it in. Talk to counsel
20 about it. I don't want to waste any time on it now. Next
21 question.

22 MR. JACOBS: The, Your Honor himself asked the
23 question how it is that Mr. Rice's medical mental situation
24 could possibly be related to the sexual misconduct issues.
25 And that --

1 JUDGE SIPPEL: I'm going to let the expert tell me
2 about that. I've heard enough about that. I'm finished with
3 that.

4 MR. JACOBS: Well, that is, at least one expert,
5 Dr. Stillings, testified to that very point in one of his
6 reports. And I wanted to --

7 JUDGE SIPPEL: Well, Stillings, I don't have too
8 much faith in what Dr. Stillings wrote at this stage of the
9 game. But I will permit it in. I would suggest that you put
10 it in your post findings.

11 MR. JACOBS: In the cross examination by the Bureau
12 there was an extensive discussion about the trips that Mr.
13 Rice took with C.Z., in particular to the broadcast stations,
14 with particular reference to transcript Page 101.

15 JUDGE SIPPEL: Of the deposition?

16 MR. JACOBS: Of the deposition.

17 JUDGE SIPPEL: Okay.

18 MR. JACOBS: And I would just like to clarify this
19 point with Mr. Rice.

20 JUDGE SIPPEL: All right. Well, ask him a question
21 then.

22 MR. JACOBS: Occasionally --

23 JUDGE SIPPEL: 101?

24 MR. JACOBS: 101.

25 JUDGE SIPPEL: Okay. Let me get to it. I think

1 you, don't you have the deposition there?

2 MR. JACOBS: No, It's --

3 JUDGE SIPPEL: It's under the seat.

4 (Simultaneous speaking.)

5 MR. KNOWLES-KELLETT: We have another copy.

6 JUDGE SIPPEL: No. It's right under the packet of
7 documents there, 101. Okay. So, get it in front of you, Mr.
8 Rice. If I can find 101. Let me see. Oh, I see. It's
9 farther. There we go.

10 MR. JACOBS: Line 15, Mr. Rice testified, C.Z. once
11 in a while would go over to the station with me when I had to
12 pick up something. Correct, Mr. Rice?

13 THE WITNESS: Yes.

14 MR. JACOBS: Now, perhaps I misheard, but it seemed
15 to me that during the extended colloquy on this question of
16 visiting broadcast stations, or station, that's what happened.
17 The singular and the plural got mixed up. And this perhaps
18 one visit by C.Z. to one station became --

19 MR. OSHINSKY: Your Honor, I'm --

20 MR. JACOBS: May I finish asking my question?

21 JUDGE SIPPEL: No. Because he has to interrupt you
22 before you get it on the record.

23 MR. OSHINSKY: Yes, I --

24 JUDGE SIPPEL: He's leading, it's a leading
25 question.

1 MR. OSHINSKY: It's not just that. I mean, I think
2 he's instructing his client in the answer.

3 JUDGE SIPPEL: Well, I'm not going to go that far.
4 It's leading. Rephrase the question.

5 MR. JACOBS: Transcript 101 refers to --

6 JUDGE SIPPEL: He knows what it refers to. He
7 knows what it refers to. It's going to the station with C.Z.

8 MR. JACOBS: Right.

9 JUDGE SIPPEL: All right. Now, what's your question?

10 MR. JACOBS: Were there other youngsters who went
11 with you to that same station or other stations?

12 THE WITNESS: Not that I recall.

13 MR. JACOBS: So, this testimony relates only to a
14 single youngster?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: It's C.Z.

17 MR. JACOBS: C.Z. Okay.

18 JUDGE SIPPEL: Next question.

19 MR. JACOBS: Your Honor, can I describe, or ask the
20 witness to describe the station which is the subject of this
21 application?

22 JUDGE SIPPEL: Why don't you just ask him a
23 question? Would you describe for us the station that you're
24 applying for?

25 THE WITNESS: It is a piece of equipment that

1 translates the signal from a different station. It's called
2 a translator. And a translator picks up, is delivered a
3 signal from either AM or FM station, and re-broadcasts on a
4 different frequency at low power.

5 MR. JACOBS: So, in this case --

6 JUDGE SIPPEL: Now, there is the first time today
7 that I have heard a clear, specific answer. Good going, Mr.
8 Rice. Good going. Let's go. Next question.

9 BY MR. JACOBS:

10 Q So, in this case what is the station that is being
11 re-broadcast or translated?

12 A Well, it could be any, almost any station. This
13 has become very popular to have translators now for secondary
14 programming. And it's, the FCC has allowed AM stations to re-
15 broadcast their AM programming on a low power FM translator
16 to get them coverage at night, and improve their coverage.

17 Q And that is the, what is currently being done. You
18 know the call sign of the station which is currently being
19 translated by the FM translator station?

20 A I believe it's W, I think 238, and then there's
21 several letters.

22 Q Well, W238CE is our translator?

23 A Yes.

24 Q But what AM station is it re-broadcasting?

25 A It's WRBZ in Montgomery, Alabama.

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1 MR. KNOWLES-KELLETT: Your Honor, I think this is
2 in the application, and it goes beyond the scope of our cross
3 examination. It seems to me that if he wanted much of this
4 in it should have been in as direct testimony to begin with.

5 JUDGE SIPPEL: How much more do you have, Mr.
6 Jacobs?

7 MR. JACOBS: I'm just about done, Your Honor.

8 JUDGE SIPPEL: Okay. Then just about complete.
9 Now, is that it?

10 MR. JACOBS: Maybe. But just give me a moment,
11 please. Okay. I'm finished.

12 MR. OSHINSKY: Your Honor, I have just a couple of
13 questions.

14 JUDGE SIPPEL: That, on redirect, I mean --

15 MR. OSHINSKY: On recross actually.

16 JUDGE SIPPEL: Yes, okay. But it's only with
17 respect to the redirect testimony?

18 MR. OSHINSKY: Yes. Yes, Your Honor.

19 JUDGE SIPPEL: Okay.

20 RECROSS EXAMINATION

21 BY MR. OSHINSKY:

22 Q Mr. Rice, you testified about your use of alcohol.
23 And in your direct testimony, or I'm sorry in your, actually
24 on cross examination you testified that you had been diagnosed
25 as having, suffering from alcohol abuse. Is that correct?

1 A Correct.

2 Q And that is different from alcoholism, is it not?

3 A I don't know.

4 Q Isn't it a more severe form of alcohol dependency
5 than alcoholism?

6 A I don't know.

7 JUDGE SIPPEL: Well, you got three concepts today.
8 You went from abuse to dependency, and alcoholism. Is there
9 any difference between any of them?

10 THE WITNESS: There might be.

11 BY MR. OSHINSKY:

12 Q But the treatment you received was for alcohol
13 abuse. Is that correct?

14 A Well, it was about drinking, excessive drinking.

15 Q And at the time you received it you were on
16 medication which really prevented you from drinking? Is that
17 correct?

18 A Yes.

19 Q And you are not on that medication anymore, are
20 you?

21 A No.

22 Q So, there's nothing preventing you from drinking
23 at this point? Is that correct?

24 A No medically.

25 Q And just one last question. You testified already

1 that Dr. Stillings did not treat you for pedophilia. Is that
2 correct?

3 A I don't know. I mean, there was so many treatments
4 in there, I'm not sure.

5 Q Well, you testified very clearly about the other
6 disorders that you suffered from, bipolar --

7 A I don't remember anything specifically about that.

8 Q Okay. So, you did not receive sex offender
9 treatment from Dr. Stillings? Is that correct?

10 A No. I did.

11 Q You did? What form did that take?

12 A Well, it was about the crimes I did. And there was
13 definitely sex offender treatment.

14 Q But, Mr. Rice, in his report Dr. Stillings
15 specifically states that he didn't consider you to be a
16 pedophile. Is that correct.

17 A That's what it says in here.

18 Q So, if he wouldn't be giving --

19 JUDGE SIPPEL: Well, do you agree with that? Or
20 is it just written there?

21 THE WITNESS: I agree I am not.

22 BY MR. OSHINSKY:

23 Q You agree you are not?

24 A A pedophile.

25 Q So, there was no reason for Dr. Stillings to be

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1 giving you sex offender treatment when he believed that your
2 sex offending was due to other mental conditions? Isn't that
3 correct?

4 A He gave me treatment on sex offending and
5 prevention on that.

6 Q But wasn't that related to your other mental
7 conditions, such as bipolar effective disorder, and dysthymia,
8 and so forth?

9 A I suppose it all was tied in.

10 Q Isn't that his conclusion, that your sex offending
11 is a result of those mental disorders?

12 A Yes. He believed that was it.

13 MR. OSHINSKY: That's all, Your Honor.

14 MR. JACOBS: Your Honor, if I may? I think that
15 last set of questions was confusing. Because --

16 JUDGE SIPPEL: Well, the record will explain that.
17 It's either confusing, or it can be understood. We're not
18 going to garble it up any more. So, let's call it a day.
19 Okay?

20 MR. JACOBS: You're the boss.

21 JUDGE SIPPEL: Well, I'm the boss. But if you have
22 a specific -- No. I'm going to stop it right here and now.
23 What time is it there?

24 MR. OSHINSKY: It's 20 after 4:00 p.m., Your Honor.

25 MR. DEVILLE: Twenty after 4:00 p.m. And you've

1 been on the stand a good part of the day. And you've been a,
2 you look like you're a happy warrior. So, we'll --

3 THE WITNESS: I wouldn't say I'm a happy warrior.
4 It's very stressful.

5 JUDGE SIPPEL: Well, just listen to me. You're not
6 to talk about your testimony with any of the special, any of
7 the witnesses, particularly the expert witnesses. You can
8 certainly consult with counsel about the case. But we may
9 want to call you back at some point.

10 So, I just want to be careful, that's all. So, I'm
11 not going to release you from your oath. No, I am going to
12 release you from your oath. We'll swear you in again if we
13 need you. Okay. So, you can eat dinner tonight and not have
14 to worry about that. Okay?

15 THE WITNESS: Thank you.

16 JUDGE SIPPEL: Do you understand me? But you're
17 going to be around?

18 THE WITNESS: Yes, I'll be around for a few days.
19 I'm planning to.

20 JUDGE SIPPEL: Mr. Jacobs? We're set?

21 MR. JACOBS: Fine.

22 JUDGE SIPPEL: We're in recess until tomorrow
23 morning at 10:30 a.m.

24 (Whereupon, the above-entitled matter went off the
25 record at 4:20 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Patrick Sullivan and
Lake Broadcasting

Before: Federal Communications Commission

Date: 05-03-17

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



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